



2009



ANNUAL ENFORCEMENT REPORT

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STATE WATER RESOURCES CONTROL BOARD
REGIONAL WATER QUALITY CONTROL BOARDS

Abbreviated report: see www.waterboards.ca.gov for complete report

STATE OF CALIFORNIA

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With special acknowledgement to the many State and Regional Water Board staff who contributed the information and examples in this report.

Abbreviated report: see www.waterboards.ca.gov for complete report

Acronyms

ACL	Administrative Civil Liability
CAA	State Water Pollution Cleanup and Abatement Account
Cal EPA.....	California Environmental Protection Agency
CAFO	Concentrated Animal Feeding Operations
CAO	Cleanup and Abatement Order
CDO	Cease and Desist Order
CIWQS	California Integrated Water Quality System
CSD	Community Services District
CTR.....	California Toxics Rule
CWA	Clean Water Act
DA	District Attorney
EO	Executive Officer
EPL.....	Expedited Payment Letter
ICC.....	International Code Council
LID	Low Impact Development
MMP	Mandatory Minimum Penalties
MS4	Municipal Separate Storm Sewer System
NPDES	National Pollutant Discharge Elimination System
NPS	Non-Point Source
NOV	Notice of Violation
O&M	Operations & Maintenance
OE or Office	Office of Enforcement
PCS.....	Permit Compliance System
PY	Personnel Year
POTW	Publicly Owned Treatment Works
PUD	Public Utilities District
QA/QC	Quality Assurance/Quality Control
RCRA	Federal Resource, Conservation, and Recovery Act
SEP	Supplemental Environmental Project
SIC	Standard Industrial Classification
SIU	Special Investigations Unit

SMARTS Storm Water Multiple Application and Reporting Tracking System
SMCRASurface Mining Control and Reclamation Act
SMR Self-Monitoring Report
SSMP Sewer System Management Plan
SSO.....Sanitary Sewer Overflow
TSO Time Schedule Order
US EPAU.S. Environmental Protection Agency
UST..... Underground Storage Tanks
Water Boards.....State and Regional Water Boards
WDR Waste Discharge Requirements
WQBEL Water Quality-Based Limitation
WWTP Wastewater Treatment Plant

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Executive Summary

This 2009 abbreviated enforcement report follows the [Baseline Enforcement Report](#) dated April 30, 2008 and the [Fiscal Year 2007-2008 Enforcement Report](#) dated April, 2009. This report describes the enforcement functions that support the Water Boards' five core regulatory programs and uses many of the performance measures described in the Baseline Enforcement Report. This report also includes a description of the enforcement activities of the Division of Water Rights.

This report, covering calendar year 2009, highlights the resources available for core regulatory program enforcement and the enforcement actions achieved with those resources. It illustrates some of the challenges faced by the Water Boards in bringing enforcement actions and provides an update on the status of the recommendations included in previous reports.

Table 1: 2009 Water Quality Enforcement Highlights¹

	2009	<i>FY 2007- 2008</i>	<i>FY 2006- 2007</i>
Regional Board enforcement staff:	62	64	78
Regional Board compliance staff:	82	94	96
State Board enforcement staff ² :	23	18	15
Number of regulated facilities:	39,704	39,692	41,156
Inspections conducted:	6,129	3,763	3,839
Violations documented:	12,378	15,177	9,801
Facilities with one or more violations:	2,733	2,970	2,527
Informal enforcement actions taken:	3,001	2,706	1,915
Formal enforcement actions taken:	303	283	180
Administrative Civil Liability actions:	174	106	107
Penalties assessed:	\$20 million	\$19 million	\$12 million
Violations receiving enforcement:	6,668	8,643	5,485

An examination of the information presented in this report demonstrates improvement in the quality of the data for some program areas, however, the Water Boards continue to face resource and data challenges.

The majority of the information in the tables and figures is generated from the Water Boards' [California Integrated Water Quality System](#) (CIWQS), which is a database containing information on the Water Boards' water quality programs. As with the Baseline Enforcement Report, some key data elements are either missing or incomplete for many of the core regulatory programs.

¹ This table only includes Water Quality related information. Water Rights Enforcement information can be found on pages 14-17.

² Does not include staff from the Division of Water Quality

Variation in data entry is apparent from region-to-region and a lack of data should not be interpreted as inactivity by some Regional Water Boards. During the reporting period, several important milestones were reached regarding improvements to CIWQS that will assist in enforcement reporting in the future. In particular, a limited number of program “modules” are being constructed which will tailor the information being collected to the “vocabulary” of the program resulting in a more logical approach to data entry and retrieval. The Office of Information Management and Analysis (OIMA), responsible for maintaining and updating the CIWQS database, has conducted several efforts to improve the quality and quantity of data. These efforts include the development of reports and the facilitation of data entry using customized “wizards”. Other efforts include data completeness and data quality analysis.

An outcome of the broader Water Board initiative to make CIWQS functional to meet internal and external data management needs is to provide useful data on compliance and enforcement activities to monitor, manage and improve its enforcement activities.

Measure Name	Measure Description
Self-Monitoring Report Evaluation	Number of self-monitoring reports due, received and reviewed and percentage of reports reviewed
Inspection Monitoring*	Number of inspections and percentage of facilities inspected
Compliance Rates*	The percentage of facilities in compliance based on the number of facilities evaluated
Enforcement Response*	Percentage of facilities in violation receiving an enforcement action requiring compliance
Enforcement Activities*	Number and type of enforcement actions
Penalties Assessed and Collected*	Amount of penalties assessed and collected, SEPs approved and injunctive relief
MMP Violations Addressed*	Number of facilities with MMP violations receiving a penalty at or above the minimum penalty assessed
Recidivism	Number and percentage of facilities returning to non-compliance for the same violation(s) addressed through an enforcement action
Environmental Benefits (as a result of an enforcement action)	Estimated pounds of pollutants reduced/removed through cleanup (soil or water), and wetlands/stream/beach/creek/river miles protected/restored (acres, etc.)

CIWQS currently supports reporting on six* of the nine performance measures described in the *Baseline Enforcement Report* and in this report.

For the measures not currently supported, information on self-monitoring reports will be reportable once the electronic self-monitoring report system is operational. Implementation of measures related to recidivism and environmental benefits is currently being evaluated, but will likely require modifications to both existing business processes and CIWQS.

Data for the Stormwater program (Construction and Industrial facilities) is now generated from a separate database named [SMARTS](#) (Stormwater Multi-Application, Reporting, and Tracking System).

Data for the Water Rights Enforcement Program is partially generated from the enhanced [Electronic Water Rights Information Management System](#) (eWRIMS) that contains information on water rights permits and licenses issued by the State Water Board.

The measures included in this report, along with measures of performance for our regulatory, financial assistance and basin planning programs, will be featured in the second annual Water Boards' [Performance Report Card](#), and scheduled for release in September 2010.

Introduction

1. Introduction and Purpose of This Report

Each year, the Water Boards prepare an Annual Enforcement Report that provides a comprehensive summary of enforcement activities and performance measures for the Water Boards' core regulatory programs. In addition, the California Environmental Protection Agency (Cal/EPA) produces the [Consolidated Environmental Law Enforcement Report](#) (Consolidated Enforcement Report) reflecting annual activities of its Boards, Departments and Offices. This report condenses the information contained in the Water Boards' Annual Enforcement Report for inclusion in the Consolidated Enforcement Report.

Enforcement Activities are carried out at the Water Boards by Regional Water Boards and State Water Board program enforcement staff. The principal goal of enforcement is to encourage compliance.

The Water Boards' core regulatory efforts are intended to promote compliance through a set of integrated actions that include:

- Ensuring permits are enforceable
- Conducting inspections
- Reviewing discharger self monitoring reports
- Investigating complaints
- Addressing non-compliance with enforcement

The enforcement component of the core regulatory programs concentrates on:

- Documenting and tracking violations
- Initiating formal and informal enforcement actions
- Coordinating with law enforcement agencies
- Monitoring and reporting on the effectiveness of State and Regional Water Boards' actions.

Enforcement strategies available to the Water Boards range from informal to the formal. An informal enforcement action can be as simple as a phone call or email while formal actions may include Investigatory Orders, Cleanup and Abatement Orders, Cease and Desist Orders, and orders imposing Administrative Civil Liability among others. For the more formal actions, a hearing before a Regional Water Board will generally be necessary. The [Water Quality Enforcement Policy](#), updated in November 17, 2009, establishes the

framework for taking enforcement actions that are appropriate in relation to the nature and severity of the violations. Consistent use of formal enforcement actions to address the most serious violations is a fundamental goal of the Water Boards. In addition to the Water Boards' enforcement strategies under federal and state law, citizens may also file suit against a discharger for alleged violations under the federal Clean Water Act, after notice has been given to the Regional Water Board of the intent to sue.

The core regulatory programs which are discussed in this report are:

- **National Pollutant Discharge Elimination System (NPDES) Wastewater Program**

Regulates the discharge of wastewater from point sources to surface waters (rivers, lakes, oceans, wetlands, etc), sewage spills and discharges of treated groundwater to surface water.

- **NPDES Stormwater Program**

Regulates pollution discharged from stormwater runoff. Pollution from construction and industrial sites is regulated under the stormwater construction and industrial program. Pollution from urban surface street stormwater runoff is regulated under the municipal stormwater program. Pollution from highways and roads is regulated under the statewide stormwater general permit for the California Department of Transportation (CALTRANS).

- **Wetlands and 401 Certification Program**

Regulates the dredging and disposal of sediments, filling of wetlands or waters, and any other modification of a water body.

- **Waste Discharge Requirements Program**

Regulates the discharge of wastewater from point sources to land and groundwater, waste generated from confined animal facilities (e.g., dairies, feedlots, stables, poultry farms) and all other pollution sources that can affect water quality not covered by other programs.

- **Land Disposal**

Regulates discharges of waste to land that need containment in order to protect water quality, including landfills, waste ponds, waste piles, and land treatment units.

- **Water Rights Enforcement**

The Division of Water Rights allocates Water Rights through a system of permits, licenses and registrations that grant individuals and others the right to beneficially use reasonable amounts of water.

Water quality can be affected by many sources. These sources can be categorized as point sources or nonpoint sources. Point source discharges are planned, easily identified “end-of-pipe” waste discharges from man-made conveyance systems (e.g., publicly owned treatment works, landfills) while nonpoint source discharges result from more diffuse sources such as agricultural or silviculture activities.

The Water Boards have broad authority to address virtually any discharge of waste that affects water quality. The tools that the Water Boards have to regulate discharges include the adoption of water quality control plans describing discharges and the issuance of Waste Discharge Requirements (permits) or NPDES permits for ongoing discharges. The Water Boards can also issue enforcement orders including cease and desist orders for an ongoing discharge, and cleanup and abatement orders to remediate the effects of a discharge.

While this report focuses on the five core regulatory programs, it is important to note that the Water Boards also have the authority to waive the requirement that a person file a report of waste discharge and/or be issued waste discharge requirements prior to initiating a discharge to surface waters not subject to federal NPDES regulations. The Water Boards use waivers to regulate types of discharges that are generally unregulated by all other states. Waivers may contain specific provisions such as requirements for monitoring, reporting, and corrective action if water quality becomes impaired. Discharges that comply with the conditions of a waiver are expected to pose a low threat to the quality of waters of the state. Dischargers that cannot comply with the waiver conditions must file a report of waste discharge. Regional Water Boards use and enforce the waiver process differently for various types activities. Finally, in addition to the core regulatory programs and discharges related through waivers, the Water Boards also take enforcement actions related to other nonpoint sources of surface water and groundwater pollution including the regulation and remediation of underground storage tanks, the restoration of brownfields, and water rights.

Section 2

2. State Water Board Enforcement

The State Water Board is responsible for the development of statewide policies, the direct enforcement of several statewide programs and provides prosecutorial support to each Regional Water Board.

Operator Certification Program: The State Water Board enforces the laws and regulations governing waste water treatment plant (WWTP) operators. The Office of Operator Certification, within the Division of Financial Assistance, administers the WWTP operator certification program. The Special Investigations Unit (SIU), within the Office of Enforcement, investigates potential cases of wrongdoing and takes enforcement action when warranted. Between, July 2008 and December 2009, SIU investigated approximately 45 WWTP operator certification cases. SIU's investigations resulted in 15 informal enforcement actions, four formal disciplinary actions and two ACLs totaling \$20,000 ACL.

Statewide Policy on Supplemental Environmental Projects

In February 2009, the State Water Board adopted a [policy on Supplemental Environmental Projects \(SEP\)](#). SEPs are projects that enhance the beneficial use of water, provide a benefit to the public, and are not otherwise required of the discharger. The Water Boards may allow a discharger to satisfy part of an administrative civil liability by completing or funding a SEP. The SEP policy outlines the criteria under which a SEP may be used to offset penalties issued by a Water Board, establishes the general types of SEPs that are allowed, and provides for SEP tracking, oversight, auditing, and public reporting. The policy increases the accountability of the SEP proponents to complete the SEP. The policy also limits SEPs to no more than 50 percent of the total penalty amount, except in limited circumstances where there is compelling justification. This policy has been approved by the Office of Administrative Law.

Statewide Enforcement Policies: In February 2009, the State Water Board adopted a Statewide [Policy on Supplemental Environmental Projects](#). In November 2009, the State Water Board updated the [Water Quality Enforcement Policy](#), which was approved by the Office of Administrative Law on May 20, 2010. As of May 20, 2010 the elements of this policy are binding on State and Regional Boards staff.

UST Tank Tester Licensing Program (TTL): The State Water Board can take administrative enforcement action against licensed tank testers. There are approximately 150 licensed tank testers in California. These individuals test UST systems to verify that the systems are not leaking and are in compliance. Between July 1, 2008 and December 31, 2009, the UST Enforcement Unit, within the Office of Enforcement, addressed 8 matters (51 facilities), which included 2 new referrals to the AGO.

Underground Storage Tank Enforcement: The UST Enforcement Unit also supports enforcement of the UST Leak Prevention and Cleanup Programs and the Cleanup Fund Program statewide, primarily by investigating violations of UST construction, monitoring, and cleanup requirements, and by reviewing allegations of fraud against the UST Cleanup Fund. Both UST leak prevention and Cleanup Fund fraud matters are referred to the Attorney General's Office or local prosecutors for action, because by statute, there is no administrative enforcement available.

Table 2: Summary of 2009 State Water Board Water Quality Enforcement Actions

Program	Administrative Civil Liability Actions/ Settlements	Referral to Other Agency	Disciplinary Action	Penalty amount
Cleanup Remediation	1			\$35,000
UST Leak Prevention		6		\$5,100,000
UST Cleanup Fund and Loans and Grants		2		
UST Tank Tester Licensing		2		
Operator Certification	2		4	\$20,000
TOTAL	1	10	4	\$5,055,000

State Water Board Water Rights Enforcement Program: The State Water Board is the state agency with primary responsibility for the administration and regulation of water rights in California. The [Division of Water Rights](#) allocates water rights through a system of permits, licenses and registrations that grant individuals and others the right to beneficially use reasonable amounts of water. Water rights permits help to protect the environment and other water users from impacts that occur as a result of water diversions by including specific conditions restricting diversions. According to the State Water Board's water rights database system, there are 38,485 water right records throughout California. In addition, more water rights have been adjudicated by the courts, exempted by legislation, or are otherwise being exercised and not reported to the State Water Board.

The following table shows the number and type of water rights on file with the State Water Board:

Applications*:	431
Permits*:	1,519
Licenses*:	10,906
Small Domestic and Livestock Stockpond Registrations*:	749
Stockpond Certificates*:	5,305
Groundwater Extraction Claims:	6,070
Statements of Water Diversion and Use:	11,463
Federal Fillings:	1,974
Other Water Rights:	68
Total Water Rights:	38,485

* Of these, the State Water Board has authority over the applications, permits, licenses, registrations and certifications.

Water Rights Enforcement Program Organization and Resources

The [Division's Enforcement Program](#) is responsible for statewide water right compliance and enforcement and to implement the State Water Board's [Water Rights Policy](#). Currently, the Enforcement Program is comprised of three separate program areas:

- The [Licensing Program](#) focuses on ensuring reasonable beneficial use of water and checking compliance for the 1,519 permits. The unit has six full time staff of which 0.5 PY is dedicated to enforcement activities.
- The [Complaints Program](#) focuses on responding and analyzing approximately 45 complaints every year. Complaint allegations relate to

unauthorized diversion and use of water, unreasonable or wasteful use of water, and impacts to public trust resources under all types of water rights. The unit has 4.8 staff of which 0.5 PY is dedicated to enforcement activities.

- The [Compliance Program](#) proactively conducts watershed-based investigations on permitted and licensed facilities and facilities that have no basis of right known by the State Water Board. The unit has six staff of which 5.5 PY is dedicated to enforcement.

All three programs initiate formal and informal enforcement actions to curtail illegal diversions and to protect prior rights and instream beneficial uses.

Compliance assurance with water rights requirements relies on reviewing of monitoring reports, conducting inspections and responding to complaints:

- Monitoring reports; The State Water Board requires water rights holders to complete and return self-monitoring reports including annual Progress Reports by Permittees and the Triennial Reports of Licensee. Special permit or license terms may also require submittal of special reports, such as those required to comply with water right Permit Terms 91 and 93. All self-monitoring reports are signed under penalty of perjury.
- Inspections; The State Water Board conducts compliance inspections and illegal diversion investigations in high resource-value watersheds including those containing threatened and endangered species. The State Water Board selects targeted watersheds annually based, in part, on recommendations from the Regional Water Quality Control Boards, the Department of Fish and Game, the U.S. Fish and Wildlife Service, and the National Marine Fisheries Service. For each target watershed, State Water Board staff develops a project priority list based on diversion quantity, special terms, or potential violations gleaned from self-monitoring reports and existing facilities without known water rights. During a five-year study period of compliance inspections from 1998 to 2003, the State Water Board determined that 38 percent of inspected facilities were in violation of water right requirements. Another 11 percent of facilities were subject to revocation or partial revocation of their water rights due to non-use of water. Thus, almost 50 percent of the inspected facilities were in violation of their water right.
- Complaints; The State Water Board relies on local residents, other agencies, and other interested persons to help them identify potential water right violations. Information regarding an actual or potential unauthorized activity is often obtained through a formal written complaint filed by the public or by another public agency. Complaints may be based on allegations that a diversion of water is in violation of permit or license terms

or conditions, is without basis of right, constitutes a misuse of water (i.e., a waste or unreasonable use of water or unreasonable method of diversion), or adversely affects public trust resources in an unreasonable manner.

As a result of Senate Bill 8 (SBX7 8), which was passed by the Legislature in 2009, the State Water Board is authorized to increase its Water Right Enforcement resources by 25 PYs. The Division is in the process of hiring for these new positions and at the same time is restructuring its Enforcement Program.

Water Rights Enforcement Program Outputs

All three enforcement programs initiate formal and informal enforcement actions to curtail illegal diversions and to protect prior rights and in stream beneficial uses. The following table shows the number and type of enforcement actions taken by the State Water Board Division of Water Rights during calendar year 2009.

Table 3: Water Rights Enforcement Actions for Calendar Year 2009

Enforcement Action Type	PROGRAM			Total
	LICENSING	COMPLIANCE	COMPLAINTS	
Oral Communication	4	-	-	4
Staff Enforcement Action	32	432	10	474
Notice of Violation	-	-	-	-
Permit and License Revocation Orders Issued	30	22	-	52
Cease and Desist Order	-	7	1	8
Administrative Civil Liability	-	4	-	4
Referral to Other Agency	-	-	-	-
Formal Referral to Attorney General	-	-	-	-
Settlement Court Order	-	-	-	-
TOTAL	66	465	11	542

The next table summarizes the basic statistics regarding the resources, the activities and actions taken by the three enforcement programs in the Division of Water Rights during calendar year 2009.

Table 4: Water Rights Enforcement Summary Statistics for 2009.

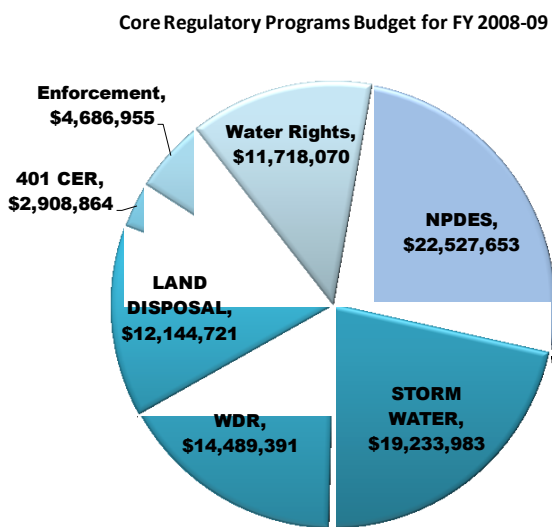
WATER RIGHTS Enforcement Program Area	LICENSING	COMPLIANCE	COMPLAINTS	TOTAL WATER RIGHTS
Regulated Universe	1,634	10,906	11,611	24,151
Enforcement Section PYs (09/10)	6.0	6.0	4.8	16.8
Enforcement Budget (09/10)	\$ 936,172	\$ 895,759	\$ 684,999	\$ 2,516,930
Enforcement Dedicated Resources (PYs)	0.5	5.5	0.5	6.5
Permits/PYs	272	1,818	2,419	1,438
Permits/Enforcement PYs	3,268	1,983	23,222	3,716
Monitoring Reports Reviewed	1,319	2,053	762	4,134
Field Inspections Conducted	26	104	14	144
Violations * (not including report violations)	412	2,928	3,147	6,487
Violations for Reports Not Submitted	304	1,321	1,143	2,768
Priority or Chronic Noncompliance Problems	72	293	315	679
Violations Found by Inspection	36	36	9	81
Priority Violations Detected	2	11	5	18
Enforcement Actions Taken	66	465	11	542
Formal Actions (Revocations, ACLs & CDOs)	30	33	1	64
Informal Actions	36	432	10	478
Cases Closed	46	328	33	407
Cease and Desist Orders	0	7	1	8
Administrative Civil Liability	0	4	0	4
Penalties Assessed	\$ -	\$ 33,980	\$ -	\$ 33,980
Enforcement Response: % of Violations with Enforcement	9%	11%	0%	6%
Water Rights Compliance Rate	56%	61%	63%	62%

* The number of non-reporting violations is estimated.

Section 3

3. Compliance and Enforcement Resources at the Water Boards (Inputs)

Most compliance, investigation and enforcement activities are performed at the nine Regional Water Boards.



The inputs³ or resources for water quality protection support many activities from planning and permitting, to taking eventual enforcement. Compliance with WDRs, Water Quality Control Plan prohibitions, enforcement orders and other regulatory tools administered by the Water Boards can be determined through a review of discharger SMRs, compliance inspections, facility reporting, complaints and file reviews. Compliance and enforcement activities can

require a high level of specialization and skill to document inspections, identify violations, prepare enforcement cases, and present expert testimony at hearings. Inspectors at the Water Boards ensure that requirements are complied with, review discharger's SMRs, and document violations in the databases. Once violations are identified and documented, they are prioritized for enforcement. Cases are developed with advice and assistance from the Water Boards' staff counsels.

The Regional Water Boards have approximately 144 (176 during FY 07-08 and 174 during previous FY 06-07) staff dedicated to compliance and enforcement activities statewide during FY 2008-09.

The State Water Board's Office of Enforcement had 23 staff dedicated for special investigations and enforcement during Fiscal Year 2008-2009 (18 during FY 07-08 and 15 in FY 06-07). These staff included a team of eight prosecutors assisting Water Board staff with their enforcement cases.

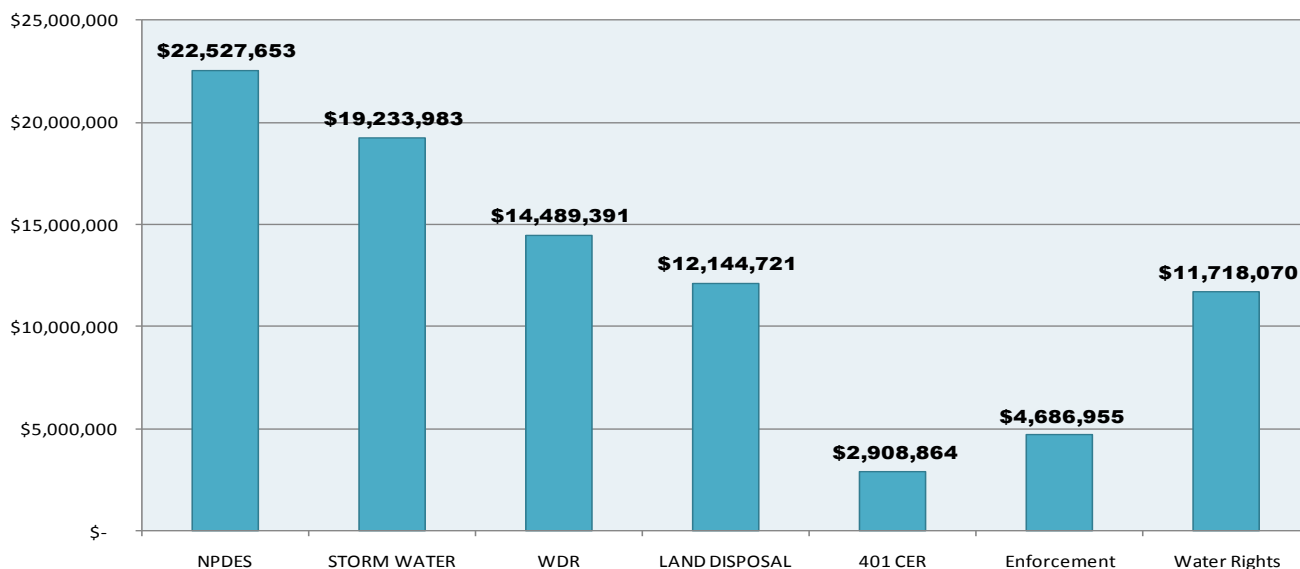
³ The dedicated enforcement budget displayed in the figure does not include the enforcement resources available through each program budget.

Compliance activities are also supported by student assistants who review SMRs, and US EPA contractors conducting inspections.

Within each program and Regional Water Board, the weight of compliance and enforcement activities varies significantly. In general, variation in the level of resources committed to these types of activities can be partially explained by the maturity of the programs: a more mature and developed program would generally focus fewer resources in permitting and new regulation and more resources on compliance activities (this is not the case for all programs). A program with more compliance problems would likely be spending more resources for enforcement.

The distribution of dedicated compliance and enforcement resources and the workload, or average number of permitted facilities assigned for every compliance and enforcement staff, also varies significantly among regions and programs. Figure 1 shows the variation in the distribution of resources by program type. These expenditures include both enforcement and non-enforcement activities.

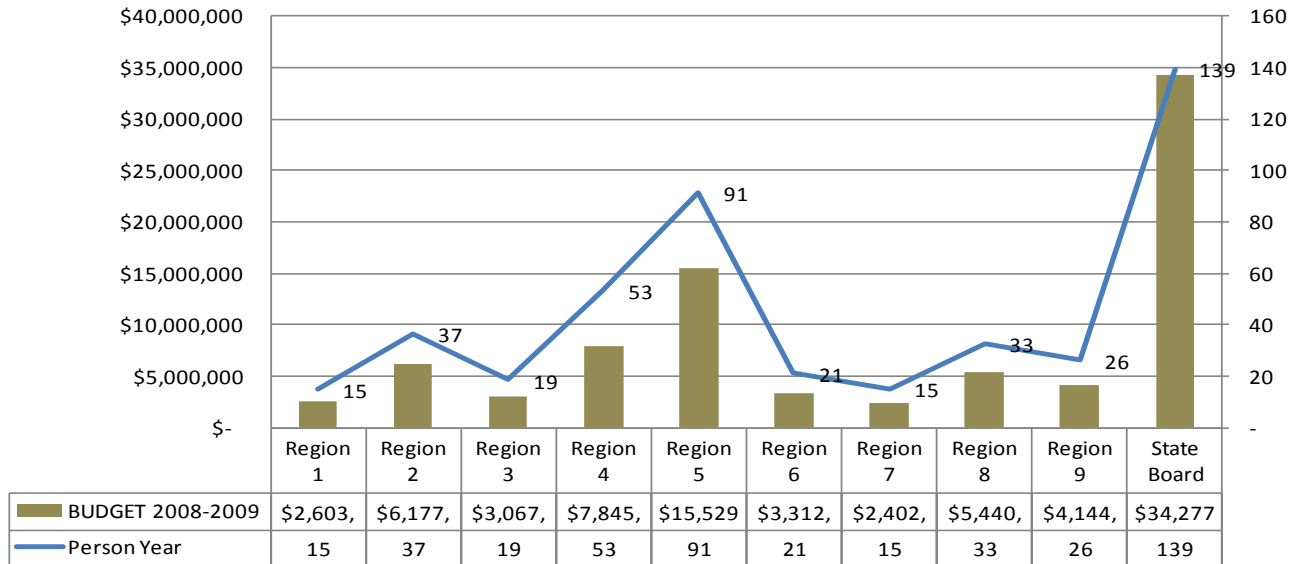
Figure 1: Core Reg. Programs Expenditures



*The enforcement column reflects only those enforcement resources specifically authorized through the Governors budget as Budget Change Proposals

The distribution of resources not only varies by program but there are significant differences among Regional Board offices as shown in Figure 2. The State Water Board devotes its resources primarily to the development and adoption of statewide standards and policies, general permits, and statewide plans, issuance of water quality control plans in areas of statewide significance, and approval of regional water quality control plans

Figure 2: Core Regulatory Programs Budget by Region



Section 4

4. Compliance and Enforcement Outputs by the Regional Water Boards

Compliance and enforcement program output measures typically describe what is produced by the core regulatory program inputs. These outputs reflect the compliance workload, complaints reviewed, SMRs reviewed, compliance inspections conducted, and the violations discovered and recorded in the Water Boards' data systems. They also reflect the enforcement actions taken in these regulatory programs.

The tables in Section 4 reveals the significant differences among Regional Water Boards in facilities regulated and inspected, violations detected and enforcement actions taken. This variation reflects the regional differences in watersheds, geography, and demographics. For example, regions with large urbanized areas (San Francisco Bay, Los Angeles, and Santa Ana) have most of the NPDES wastewater and stormwater facilities, reflecting the large populations in these areas, land development, and higher land use costs resulting in discharges directly to streams, rivers, lakes, and the ocean. Similarly, the majority of the facilities regulated with WDR are in Region 5 (Central Valley Regional Board) reflecting the large geographic area of this region, its largely rural nature, and that more of these discharges are directly to land instead of to surface waters. Where a particular facility is regulated by multiple programs, that facility will be counted in each applicable table.

Violations vary from not submitting monitoring reports on time to acute toxicity violations. The Water Boards identify priority violations based on criteria identified in the [2009 Water Quality Enforcement Policy](#)⁴. A priority violation represents a greater threat to water quality than other violations.

In many instances, multiple violations are covered by a single enforcement action. Likewise, there may be several enforcement actions taken in response to a single violation, such as issuance of an initial letter or notice of violation, followed by a cleanup order and a separate penalty action.

The Water Boards have a variety of enforcement tools available. Enforcement actions taken as a result of a violation include informal and formal actions. An informal enforcement action is any enforcement action taken by Water Board staff that is not defined in statute, such as staff letters and notices of violation.

⁴ The 2009 Water Quality Enforcement Policy was approved by the Office of Administrative Law on May 20, 2010.

The relatively low number of informal enforcement actions recorded in CIWQS and presented in this report may not accurately represent the level of effort spent by staff in performing these activities. Formal enforcement actions are statutorily recognized actions to address a violation or threatened violation such as Cleanup and Abatement Orders and assessment of penalties. The term "Receiving Enforcement" used in the tables in this Section includes both informal and formal actions taken to address documented violations.

The 2009 Water Quality Enforcement Policy guides staff in selecting the appropriate level of enforcement response that properly addresses violations and recommends the use of progressive enforcement. The policy describes progressive enforcement as "an escalating series of actions that allows for the efficient and effective use of enforcement resources". Depending on the nature and severity of the violation, an informal enforcement action such as a warning letter to a violator, or a more formal enforcement action, including orders requiring corrective action within a particular time frame, may be taken. In other instances, enforcement staff may use more informal tools, such as a phone call or a staff enforcement letter for compliance assistance. The different enforcement options are described in Appendix 1.

Historically the Water Boards have not tracked informal activities in their database systems because of a lack of dedicated resources to data entry. The 2009 Water Quality Enforcement Policy requires the Water Boards to carefully track the outcomes of both informal and formal enforcement actions to provide a more comprehensive picture of all enforcement activities.

It is important to note that these tables are based on data available in the CIWQS database. While the CIWQS database was deployed in mid-2005, the Water Boards continue to work on the quality and completeness of the data, as well as the functionality and reporting capabilities of the database. Because of these limitations, inconsistencies and apparent deficiencies in the data presented in this report do not necessarily reflect inconsistencies in the enforcement program statewide.

NPDES Wastewater Program Outputs

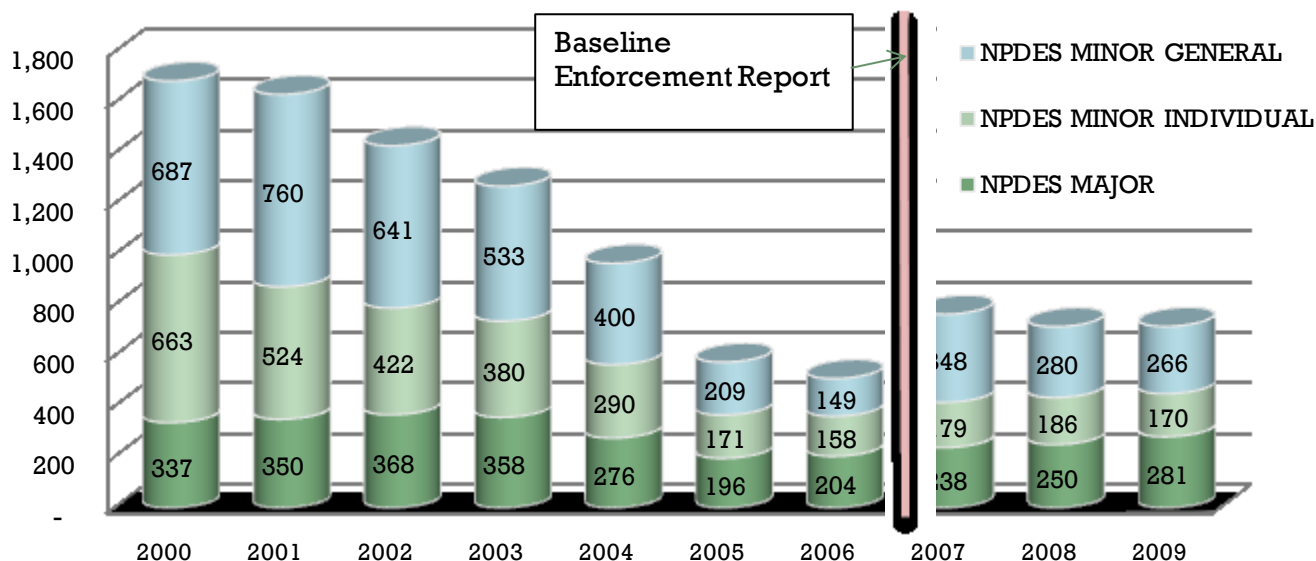
Compliance Assurance Outputs

More than 14,800 self monitoring reports are received annually by the Regional Water Boards to comply with the NPDES wastewater program requirements. SMRs are submitted with different frequencies. Most dischargers submit quarterly and annual reports. Major dischargers for the NPDES program may be also required to submit monthly reports. All regulated facilities must submit, at a minimum, an annual report. For Year 2009 the CIWQS database was not capable of tracking monitoring reports due, received and reviewed for the programs described in this report. Therefore, at this time it is not possible to produce statistics about the SMRs. It is also important to mention that the majority of the violations identified in this report have been detected through the manual review of SMRs.

Inspections conducted are tracked in the CIWQS database and for the NPDES wastewater program, 614 facilities were inspected during Year 2009.

Figure 3: NPDES Inspection Trends 2000-2009

Inspections by Year

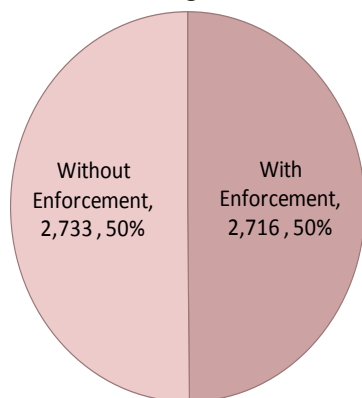


According to the 2006 NPDES Memorandum of Agreement between US EPA (Region 9) and the Water Boards, inspection frequencies are as follows: All major dischargers will be inspected at least once a year. Minor dischargers

generally will be inspected once a year, as resources allow, but no less than once during the five-year permit cycle. The percentage of facilities inspected for each region differs significantly depending on whether the facility is a major discharger, a minor discharger under an individual permit or a minor discharger enrolled in a general permit.

Figure 4: NPDES Enforcement Response

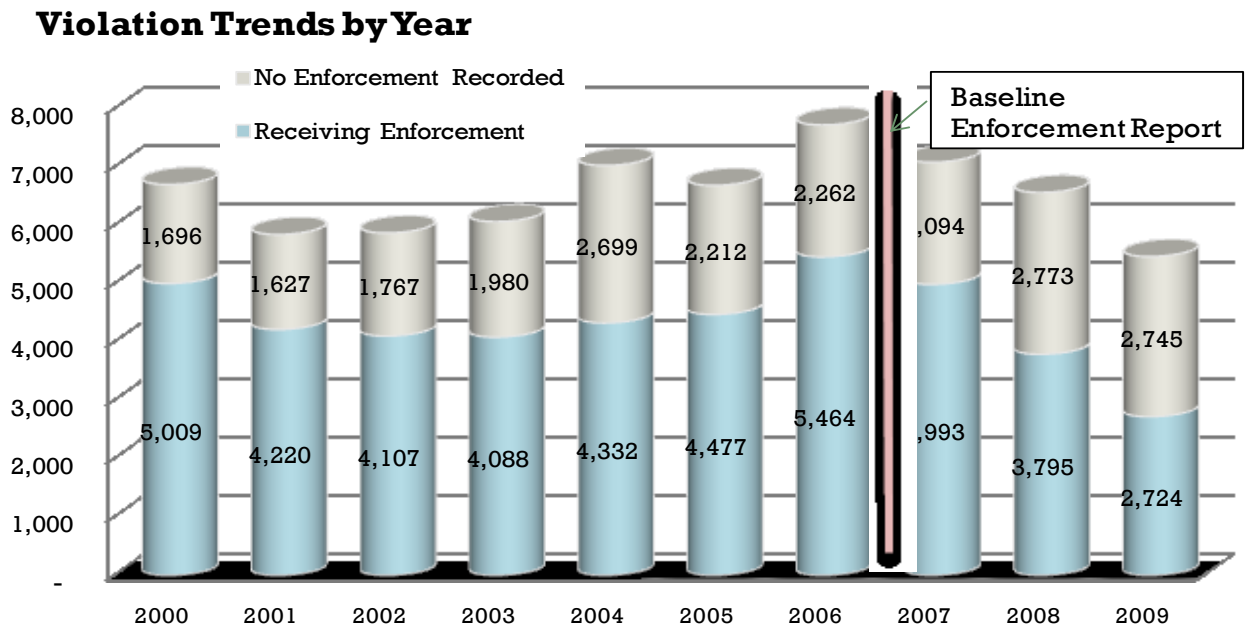
**Statewide, ENFORCEMENT RESPONSE NPDES
Violations Receiving Enforcement in 2009**



Approximately 84% of major NPDES facilities and 43% of minor individual NPDES facilities were inspected in 2009.

The Water Boards Enforcement Policy establishes the criteria for prioritizing enforcement actions against violations. Approximately 50% of all NPDES violations received some level of enforcement.

The reasons for this variability include differences in facility-specific requirements, Regional Water Board office processes and the priority to report review and enter data, differing rates of compliance among dischargers, and the redirection of resources to address other program needs.

Figure 5: NPDES Wastewater Violations Trends 2000-2009

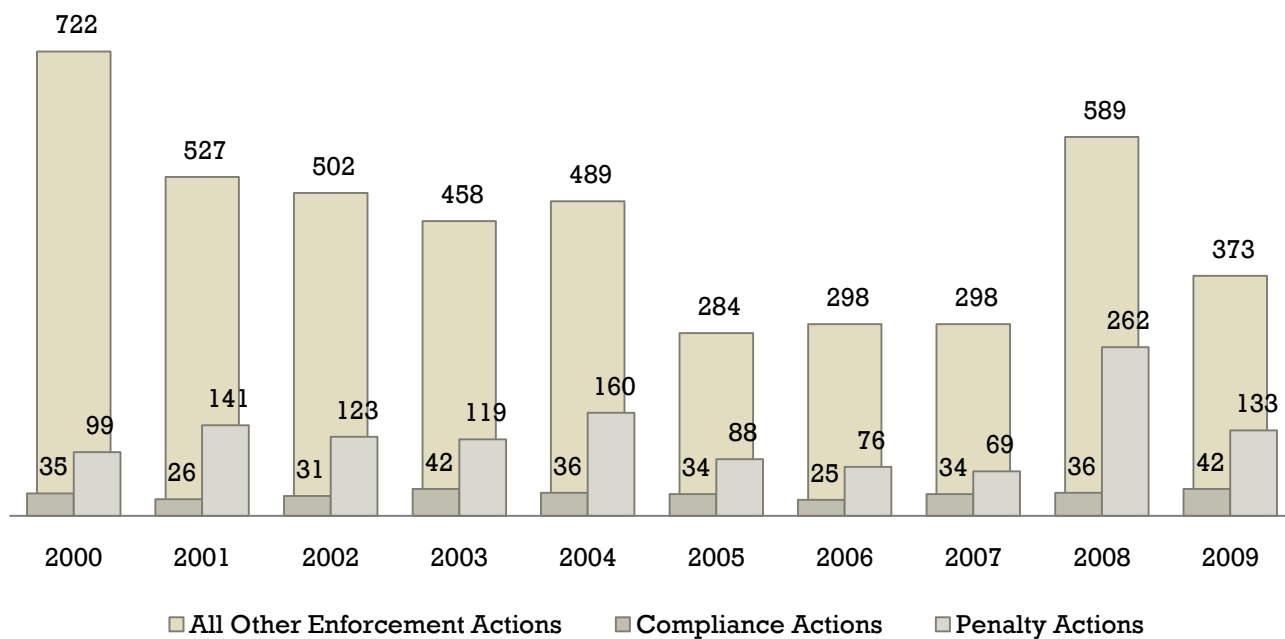
As shown in

Figure 5, trends in the number of violations receiving and not receiving both formal and informal enforcement for the entire NPDES wastewater program have remained somewhat constant since violation data was collected. The upward trend may be explained due to better violation documentation in the Water Boards' databases. Also, the average percentage of violations receiving enforcement remained at around 65% during this period.

Enforcement Action Outputs

The number of enforcement actions has fluctuated significantly since 2000, both in numbers and in the type of enforcement actions taken. Informal actions remain at high levels. The number of Administrative Civil Liabilities (penalty actions) in 2009 has increased substantially compared to the actions issued in 2005, 2006 and 2007, however, still not approaching levels seen during 2008. The high number of penalty actions issued in 2008 is, in part, as a result of the [2008 Statewide Initiative for Mandatory Minimum Penalty enforcement](#).

Figure 6: NPDES Wastewater Enforcement Actions Trends



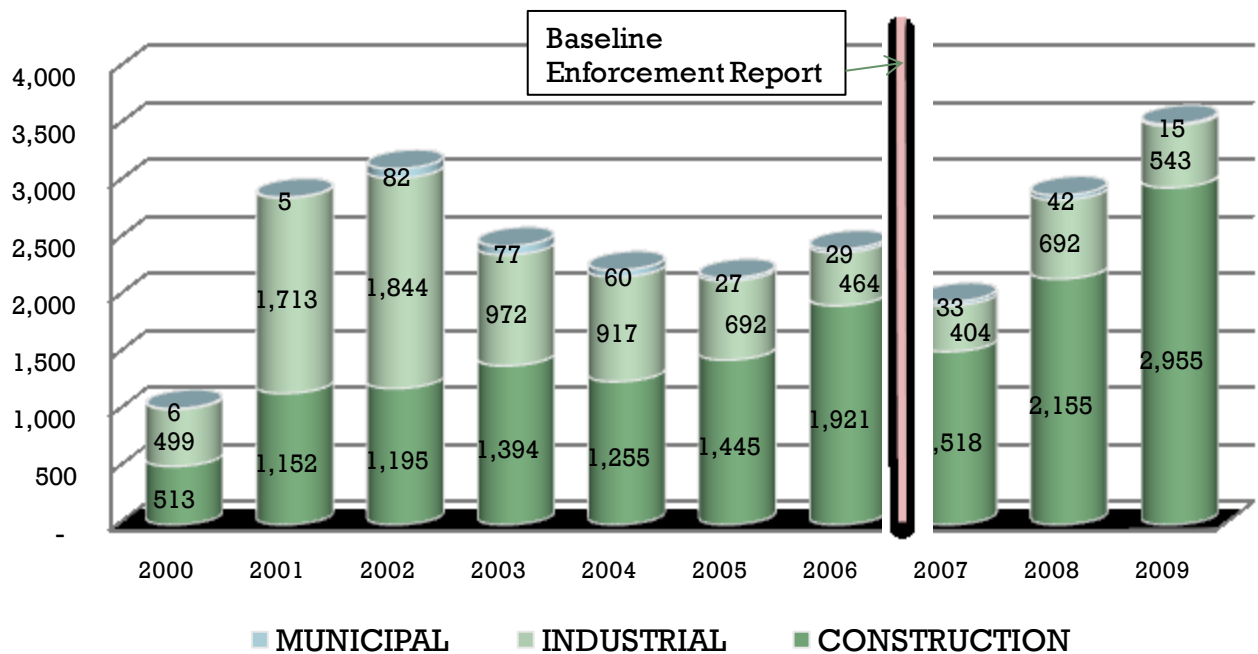
NPDES Stormwater Program Outputs

Compliance Assurance Outputs

The NPDES stormwater program regulates three types of dischargers: industrial activities, construction activities and municipal (phases I and II). Inspections conducted for industrial and construction activities are now tracked in the [SMARTS](#) database. For the Stormwater Program, of the approximately 25,000 permittees, 3,025 facilities were inspected in 2009 (1,535 during Fiscal Year 2007-2008). The following chart displays the trends in the number of inspections conducted since 2000⁵.

Figure 7: Stormwater Inspections Trends

Inspections by Year



The percentage of facilities inspected is low compared to the number of facilities regulated. This can be explained by the large number of facilities regulated under the program. The Stormwater Program has an active inspection program and conducts the most inspections of the five core regulatory programs.

For Year 2009 the [SMARTS](#)⁶ database is now capable of tracking monitoring reports due, received and reviewed for the Stormwater Industrial program. Of

⁵ *This figure does not reflect the approximately 9,000 inspections conducted by the Los Angeles Regional Water Board that had not been entered into CIWQS.

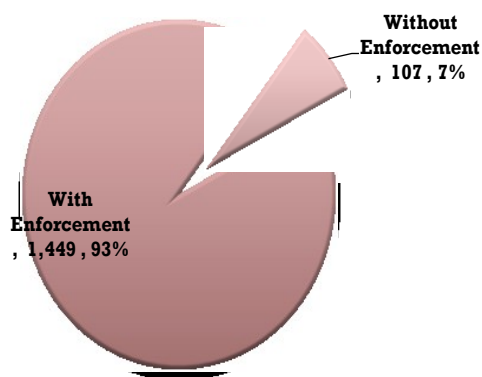
⁶ SMARTS: Stormwater Multi-Application, Reporting, and Tracking System

the approximately 9,000 SMRs received every year by the Regional Water Boards to comply specifically with the industrial storm water program requirements⁷, approximately 75% of the reports due were fully submitted during the reporting period.

Most of the violations noted in the storm water program are reporting violations.

Figure 8: Stormwater Enforcement Response

Statewide, ENFORCEMENT RESPONSE STORMWATER
Violations Receiving Enforcement in 2009



Most non-reporting violations in the storm water program are discovered through site inspections.

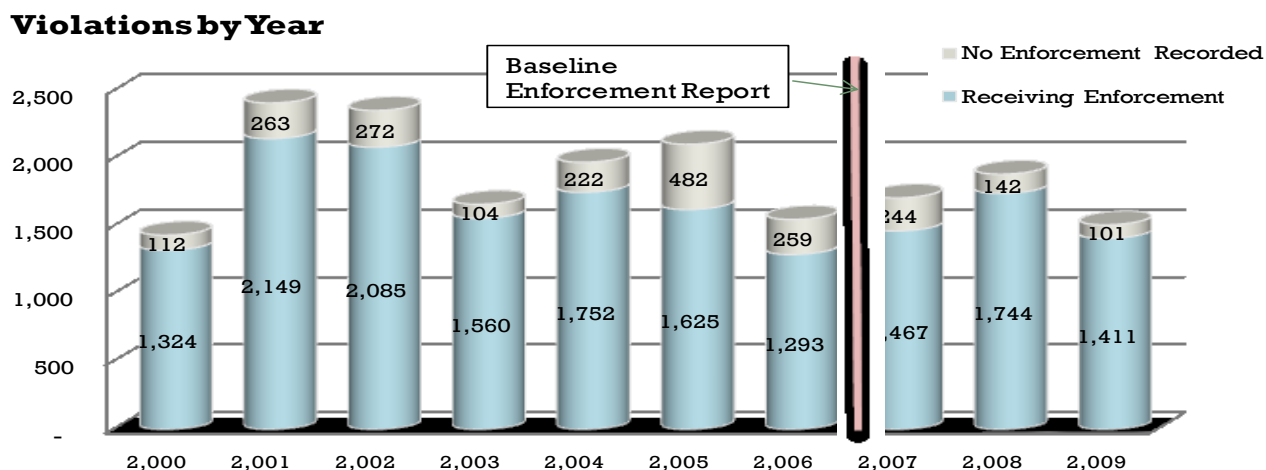
This situation differs from violations at NPDES facilities where the majority of discharge violations are found through a review of SMRs submitted by the dischargers. This difference in recorded violations reflects the difference in how NPDES wastewater and stormwater sites are regulated. While wastewater sites are largely regulated through self-monitoring to ensure compliance with specific effluent limits,

stormwater sites are regulated to ensure that sediment and other potential contaminants are prevented from leaving these sites through proper on-site controls. Ensuring that these controls are adequate for the nearly 25,000 permitted stormwater permittees would require a large field presence.

Although violation recording may have been affected by the implementation of the new database, the number of violations remained fairly constant and the percentage of violations receiving enforcement remained above 90% since 2000 as shown in Figure 9.

⁷ At the time of this report, entities regulated under the construction stormwater permit were not required to submit monitoring reports

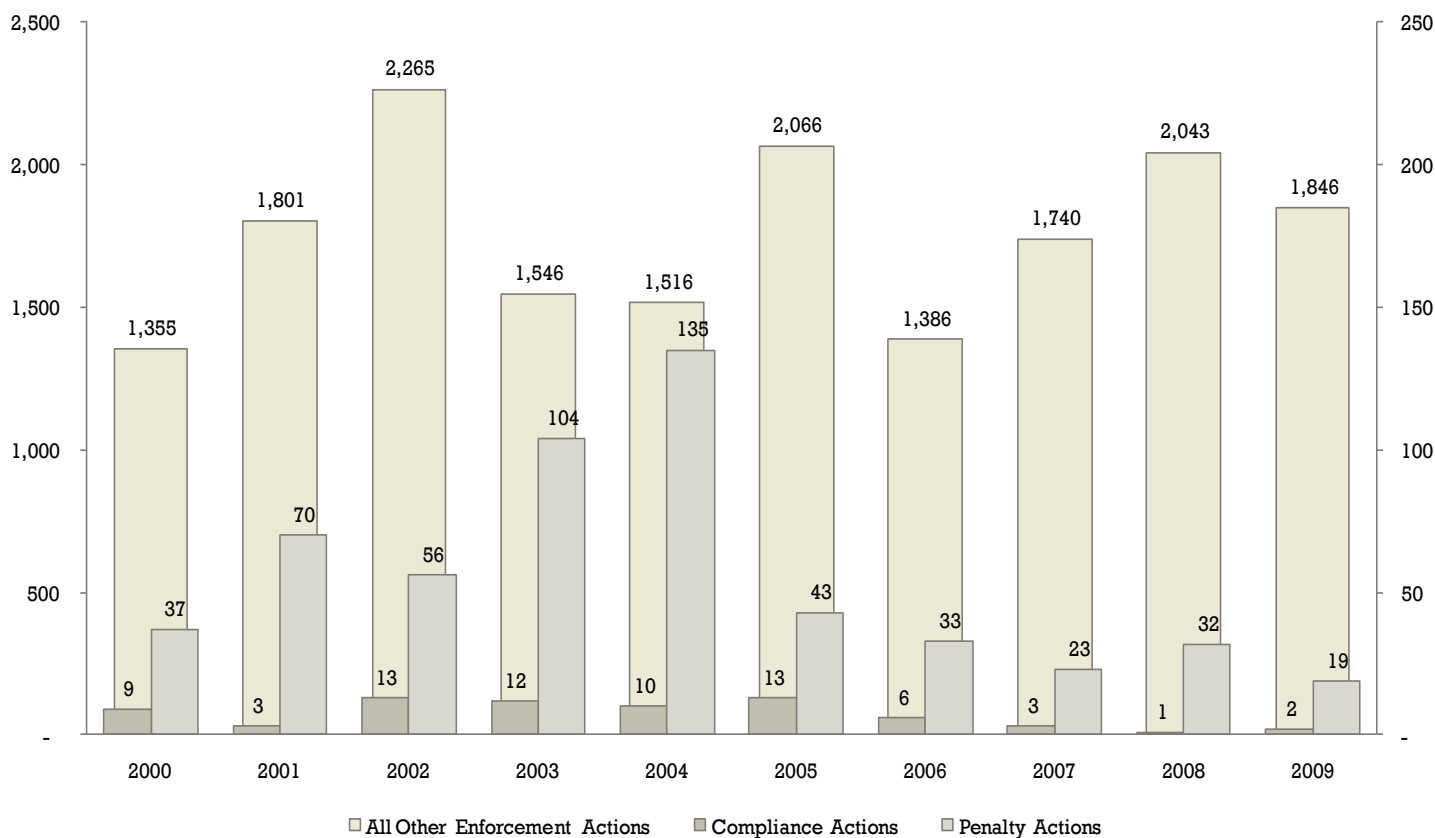
Figure 9: NPDES Stormwater Violations Trends



Enforcement Action Outputs

The enforcement efforts for the stormwater program have remained at fairly constant levels as shown in

Figure 10: NPDES Stormwater (Construction and Industrial only) Enforcement Actions Trends



401 Certification Program Outputs

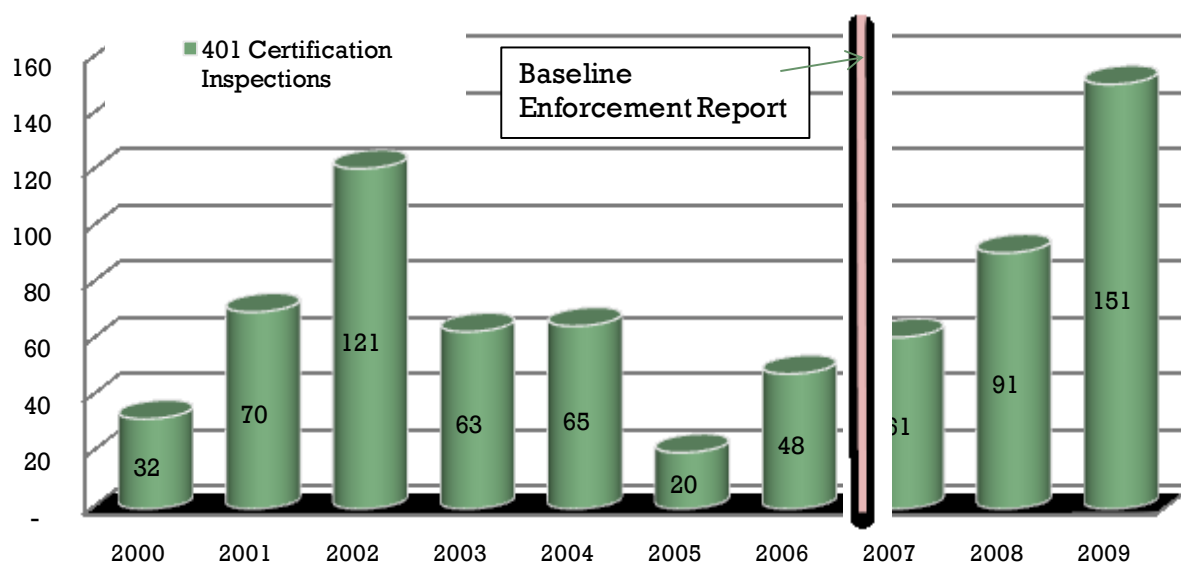
Compliance Outputs

For the 401 Certification Program, 161 of the 4,900 facilities regulated were reported as inspected during 2009. The 401 Certification Program does not yet use CIWQS consistently and the data provided is only current for some Regional Water Boards. However, where 401 certification violations were documented in CIWQS, 59% received enforcement.

Figure 11 shows the trends in the number of inspections conducted and recorded since 2000.

Figure 11: 401 Certification, Inspections 2000-2009

Inspections by Year

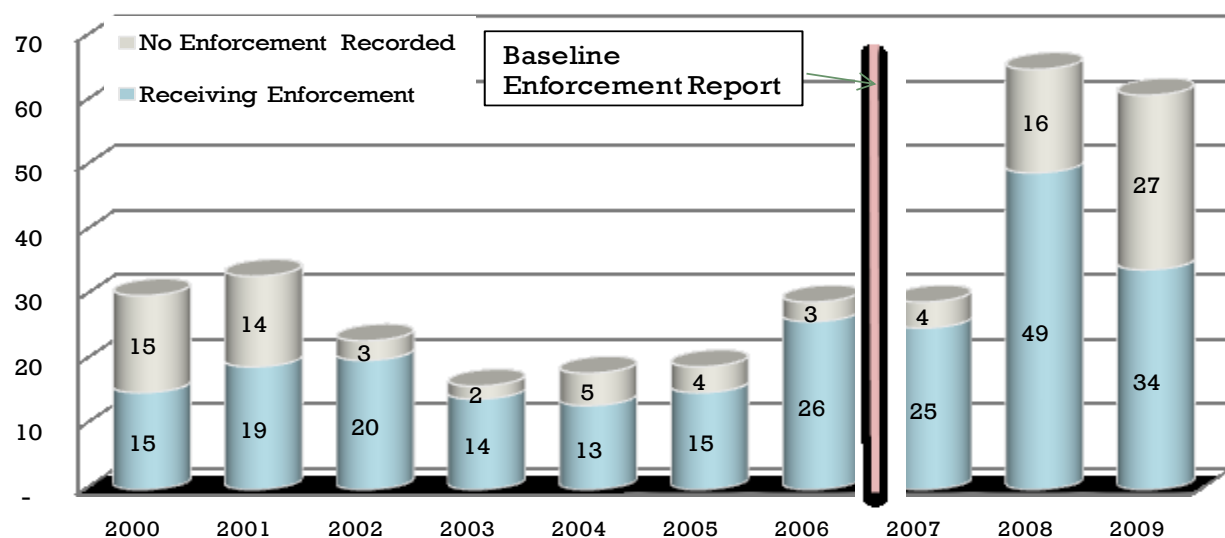


* Data only from CIWQS

Trends in the number of violations receiving and not receiving enforcement for the 401 Certification Program has fluctuated since 2000 as shown in Figure 12.

Figure 12: 401 Certification, Violations 2000-2009

Violations by Year

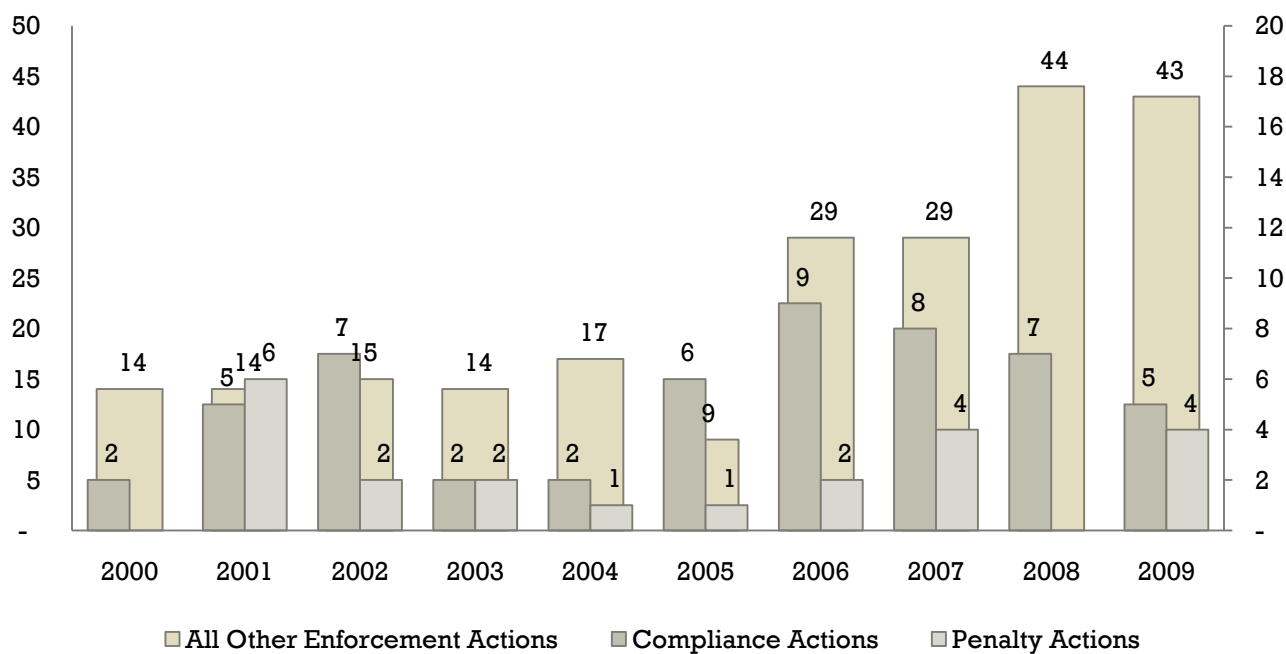


* Data only from CIWQS

Enforcement Action Outputs

Figure 13 shows enforcement actions issued under the 401 Certification program since 2000.

Figure 13: 401 Certification, Enforcement Actions Trends



* Data only from CIWQS

Waste Discharge Requirements (WDR) Program Outputs

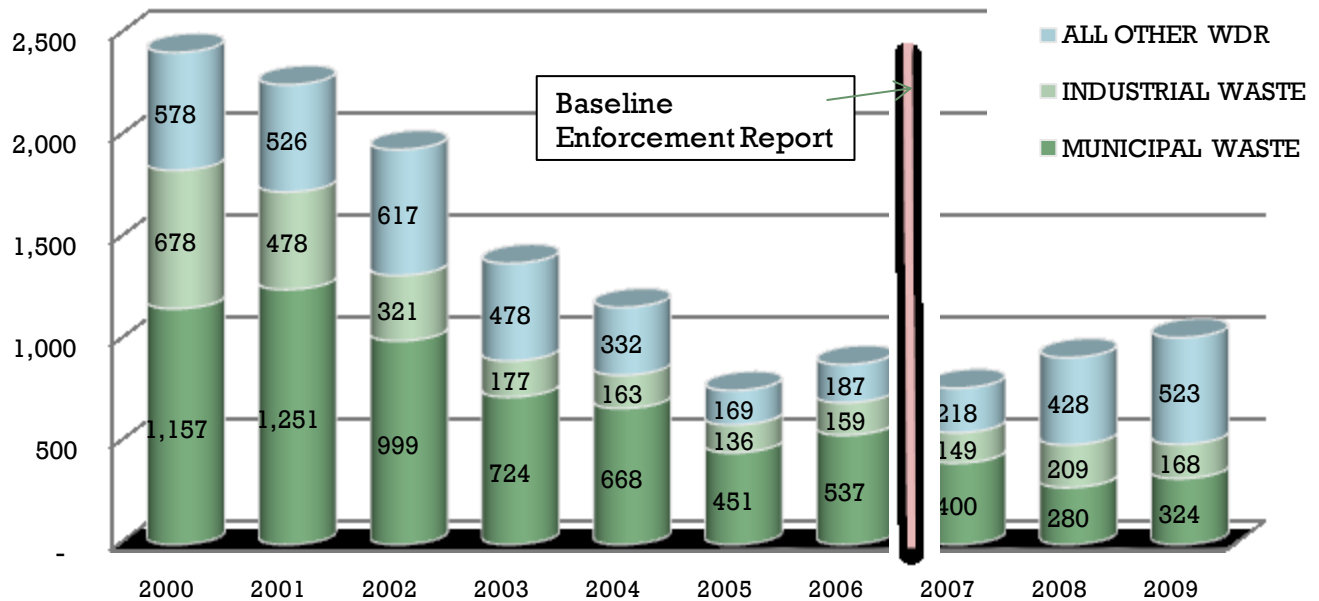
Compliance Outputs

More than 25,000 SMRs are received annually by the Regional Water Boards under the WDR program. Monitoring reports are submitted annually or as specified in WDR program requirements. For 2009, the CIWQS database did not track monitoring reports due, received and reviewed for the WDR program, therefore statistics about the number of reports are not included.

The figures below portray a clear reduction in enforcement related program activity. While the data does not describe why this reduction has occurred, it is probable that regional priorities to address the substantial permit backlog in this program took precedent over compliance and enforcement activities.

Figure 14: WDR Program, Inspections 2000-2009

Inspections by Year



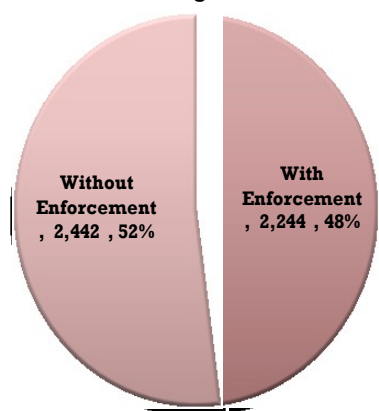
Note that the Water Boards are pioneering efforts to regulate specific categories of discharges nationally. For example, collection systems are in the early stages of regulation through a Statewide Sanitary Sewer Order adopted by the State Water Board in 2006. As program implementation progresses, the numbers of facilities regulated and inspected (as depicted in Table 26) are expected to increase throughout the state.

Facilities regulated under the WDR program can be classified into five categories based on the waste type and the activity type. The recorded inspections for these categories demonstrate that:

- 15% of the municipal wastewater treatment plants were inspected
- 17% of the industrial wastewater treatment plants and food processing plants were inspected
- Wastewater collection systems (SSO) were not recorded as inspected
- 14% of dairies and confined animal facilities were inspected
- 15% of all other activities, including, recycled water use, timber harvest, etc. were inspected.

Figure 15: WDR Facilities, Enforcement Response

**Statewide, ENFORCEMENT RESPONSE WDR
Violations Receiving Enforcement in 2009**



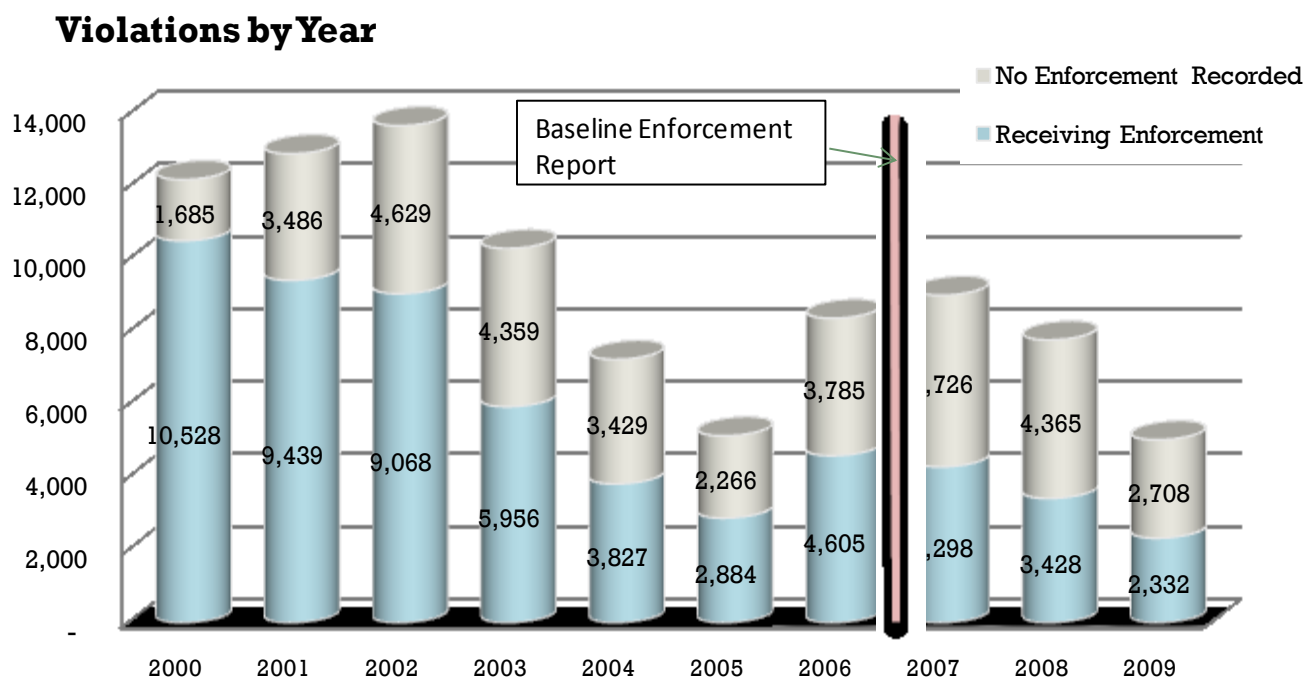
Approximately 48% of all documented WDR violations occurring during year 2009 received an enforcement action.

Statewide by category, the number of violations receiving enforcement varies considerably as shown below.

WDR Category	No. of Facilities	Violations			Priority Violations		
		Total Violations (including priority)	Receiving Enforcement	% of Violations Receiving Enforcement	Total Priority Violations	Receiving Enforcement	% of Violations Receiving Enforcement
Municipal Waste	1,702	3,296	1,639	50%	410	178	43%
Industrial Waste	951	537	155	29%	184	39	21%
WDR Collection Systems	1,069	353	88	25%	6	3	50%
WDR Dairies/CAFO	1,481	374	286	76%	22	20	91%
WDR All Other	2,067	479	164	34%	69	21	30%

Trends in the number of violations receiving and not receiving enforcement for the entire WDR program has fluctuated substantially since 2000.

Figure 16: WDR Program, Violations Trends



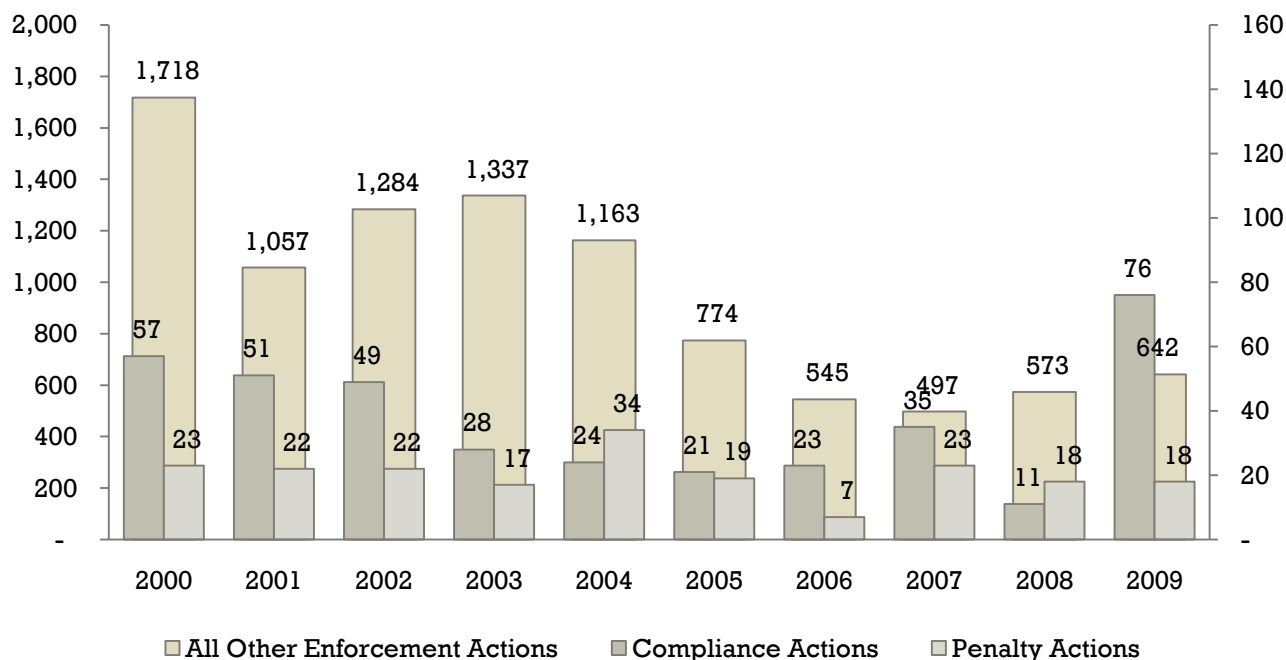
As noted, the types of dischargers regulated under the NPDES and WDR programs are similar, the primary difference is that NPDES discharges are to surface waters and WDR discharges are to land and groundwater. While there are more WDR facilities, they are often smaller in scale than NPDES facilities. The land-intensive nature of these discharges means that these facilities are often found in more rural settings. WDR discharge violations can affect groundwater resources, and such effects can take longer to remediate or recover than surface water impacts.

As with NPDES violations and enforcement actions, regional variations in the outputs for WDR facilities reflect differences in the facilities regulated, resources made available for enforcement, and the priority assigned to tracking and recording violations and enforcement actions.

Enforcement Action Outputs

The number of enforcement actions has fluctuated significantly since 2000. We have seen a significant decrease in the number of informal actions documented since 2003, although the level of formal enforcement remained at similar levels. This may be due, in part, to not recording informal actions in the new CIWQS database. The higher number of compliance actions in 2009 is mainly due to the issuance of 65 Cease and Desist orders to on-site wastewater disposal systems by the Victorville Office (Region 6)⁸.

Figure 17: WDR Program, Enforcement Actions 2000-2009



⁸ See Region 6 case description on Appendix 2.

Land Disposal Program Outputs

Compliance Outputs

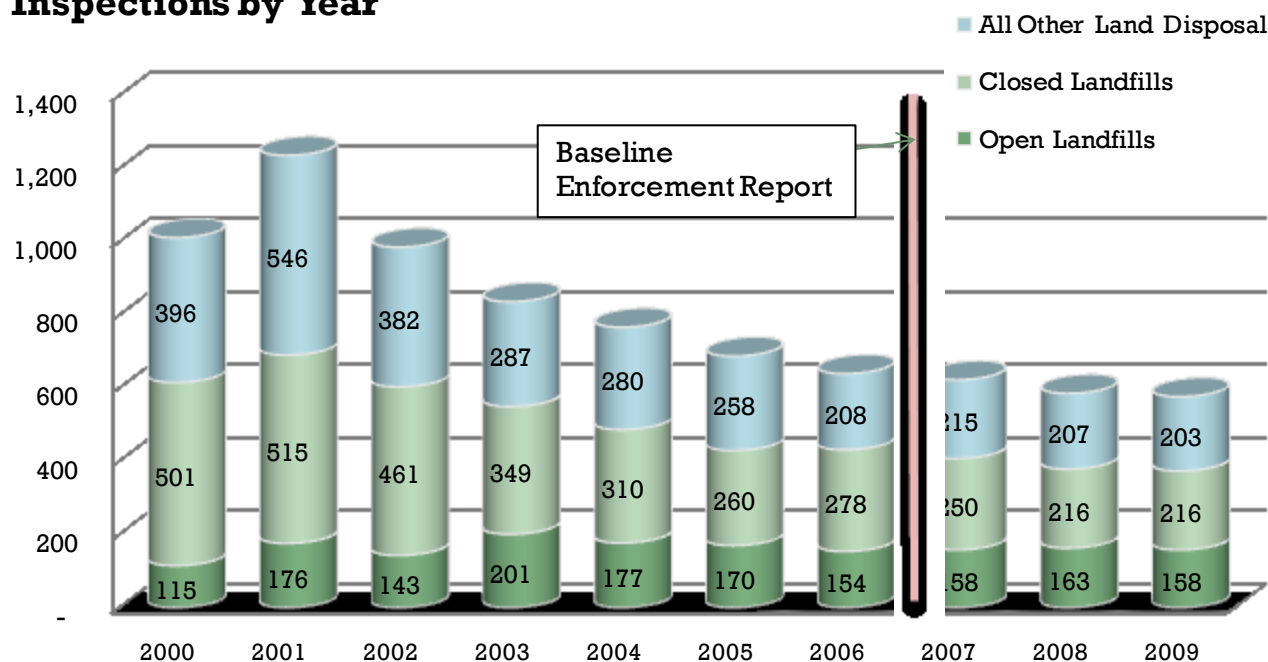
More than 2,000 SMRs are received annually by the Regional Water Boards to comply with the land disposal program requirements. Monitoring reports are submitted as specified in the permit requirements. For 2009, the CIWQS database did not track monitoring reports due, received and reviewed for any program. Therefore, at this time it is not possible to produce statistics about the number of SMRs for which compliance was assessed.

Facilities regulated under the Land Disposal program can be classified into three categories based on the waste type and the threat to water quality. Categories include: Landfills actively receiving waste (open), landfills that are closed and no longer accept waste (closed), and all other land disposal facilities (including surface impoundments, waste piles, land treatment units, etc)

Figure 18 shows the trends in the number of inspections conducted since 2000.

Figure 18: Land Disposal Program, Inspections Trends 2000-2009

Inspections by Year



For 2009, 68% of the Open Landfills were inspected, 45% of the closed landfills were inspected and 52% of all other landfills were inspected.

Trends in the number of violations receiving, and not receiving, enforcement for the entire Land Disposal Program has fluctuated since 2000. The percentage of violations receiving enforcement fluctuated from 70% to 30% during this period.

Figure 19: Land Disposal, Violations Trends

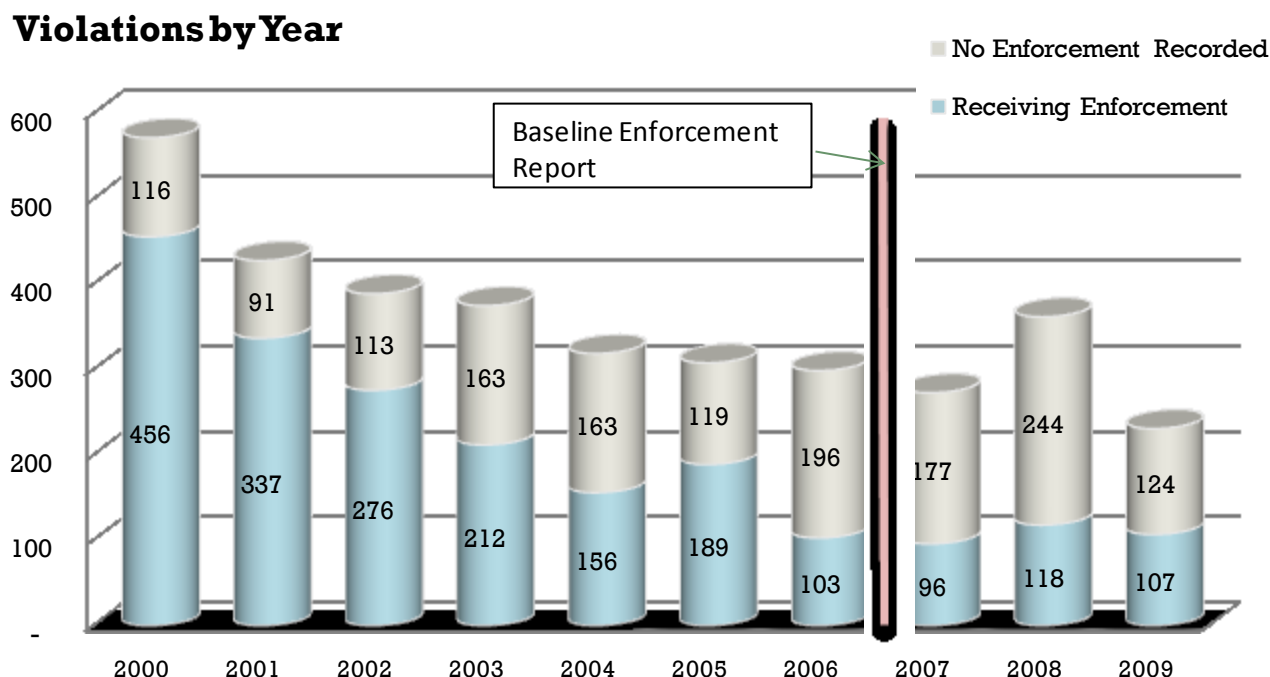
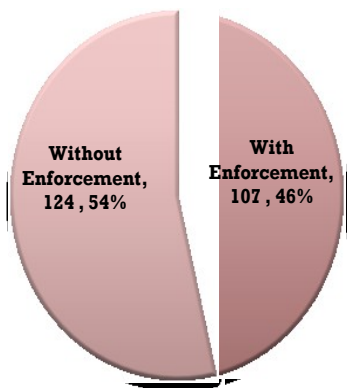


Figure 20: Land Disposal Enforcement Response

Statewide, ENFORCEMENT RESPONSE LAND DISPOSAL Violations Receiving Enforcement 2009



Sites regulated under the Land Disposal Program are generally stationary, long-term sites that require on-going monitoring to detect a release of waste that could impact groundwater.

Enforcement Action Outputs

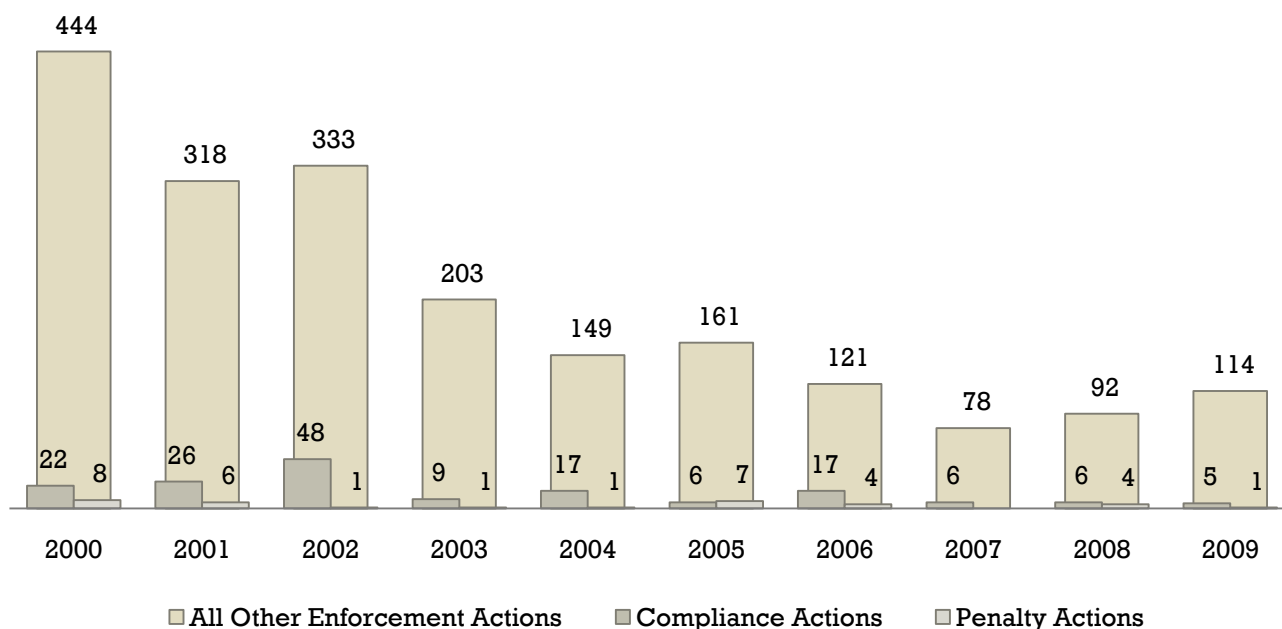
The following table lists the number of enforcement actions taken by the Regional Water Boards ranked from informal to more formal, during 2009.

Table 5: Land Disposal Enforcement Actions for Year 2009

LAND DISPOSAL PROGRAM Enforcement Actions for Year 2009														
Enforcement CATEGORY	Enforcement Action TYPE	Regional Board												Total
		1	2	3	4	5F	5R	5S	6A	6B	7	8	9	
ALL OTHER ACTIONS	Staff Enforcement Letter		3			10	1			4		5	1	24
	Oral Communication		1	1						3		11		16
	Notice of Violation											12		12
	Expedited Payment Letter				6	34	3	5		5		1	1	55
COMPLIANCE ACTIONS	13267 Letter		2			1	1						1	5
	Clean-up and Abatement Order								3		1	1		5
	Waste Discharge Requirements													-
	Cease and Desist Order													-
PENALTY ACTIONS	Stipulated Penalty													-
	Admin Civil Liability												1	1
TOTAL	TOTAL	0	6	1	6	45	5	5	3	12	1	30	4	118

Figure 21 shows trends in enforcement actions issued since 2000.

Figure 21: Land Disposal, Enforcement Actions Trends



Assessment of Administrative Civil Liability

The Water Boards have authority to assess Administrative Civil Liabilities (ACL) for certain violations. In some cases, these violations require the recovery of a Mandatory Minimum Penalty (MMP).

In 2009, the Regional Water Boards assessed more than \$20 million in liabilities. In some situations, the Regional Water Boards accepted a Supplemental Environmental Project (SEP) in lieu of monetary payment for a portion of the penalty. SEPs are for environmentally beneficial projects: either for projects the discharger would not otherwise have had to complete, or in some limited cases, for projects designed to return the discharger to compliance. Allowance for these projects is at the discretion of the Regional Water Board. There is a large variation from region-to-region in how these liabilities are allocated between penalties paid and SEPs allowed. In early 2009, the State Water Board adopted changes to limit the amount of a penalty that can be deferred to a SEP.

The Regional Water Boards record the amount for the SEP as part of the total amount assessed to the dischargers. The Table below shows the breakdown by Regional Water Board. SEPs and compliance projects are addressed under "Project." The pending amounts are outstanding amounts that have not been recorded as paid, or projects that are not yet complete.

Penalties Assessed in 2009*

RB	Number of ACLs	Total Amount Assessed	Liability Amount	Liability Pending	Project Amount	Project Pending	Total Pending
1	7	\$2,311,985	\$2,296,300	\$2,278,300	\$15,685	\$15,685	\$2,293,985
2	15	\$6,116,250	\$4,078,975	\$2,828,175	\$2,037,275	\$2,037,275	\$4,865,450
3	2	\$202,000	\$202,000	\$70,500	\$0	\$0	\$70,500
4	37	\$2,340,750	\$2,340,750	\$1,913,991	\$0	\$0	\$1,913,991
5F	6	\$1,533,000	\$1,533,000	\$1,496,250	\$0	\$0	\$1,496,250
5R	11	\$347,500	\$286,000	\$240,100	\$61,500	\$52,500	\$292,600
5S	36	\$1,655,850	\$1,402,700	\$573,475	\$253,150	\$253,150	\$826,625
6A	3	\$3,037,000	\$787,000	\$512,000	\$2,250,000	\$2,062,500	\$2,574,500
6B	0	\$0	\$0	\$0	\$0	\$0	\$0
7	5	\$299,640	\$253,140	\$209,640	\$46,500	\$46,500	\$256,140
8	3	\$762,000	\$426,000	\$336,000	\$336,000	\$336,000	\$672,000
9	13	\$1,810,380	\$1,700,880	\$718,200	\$109,500	\$109,500	\$827,700
Totals	138	\$20,416,355	\$15,306,745	\$11,176,631	\$5,109,610	\$4,913,110	\$16,089,741

*Data from CIWQS, it does not include penalties assessed under the Underground Storage Tanks program.

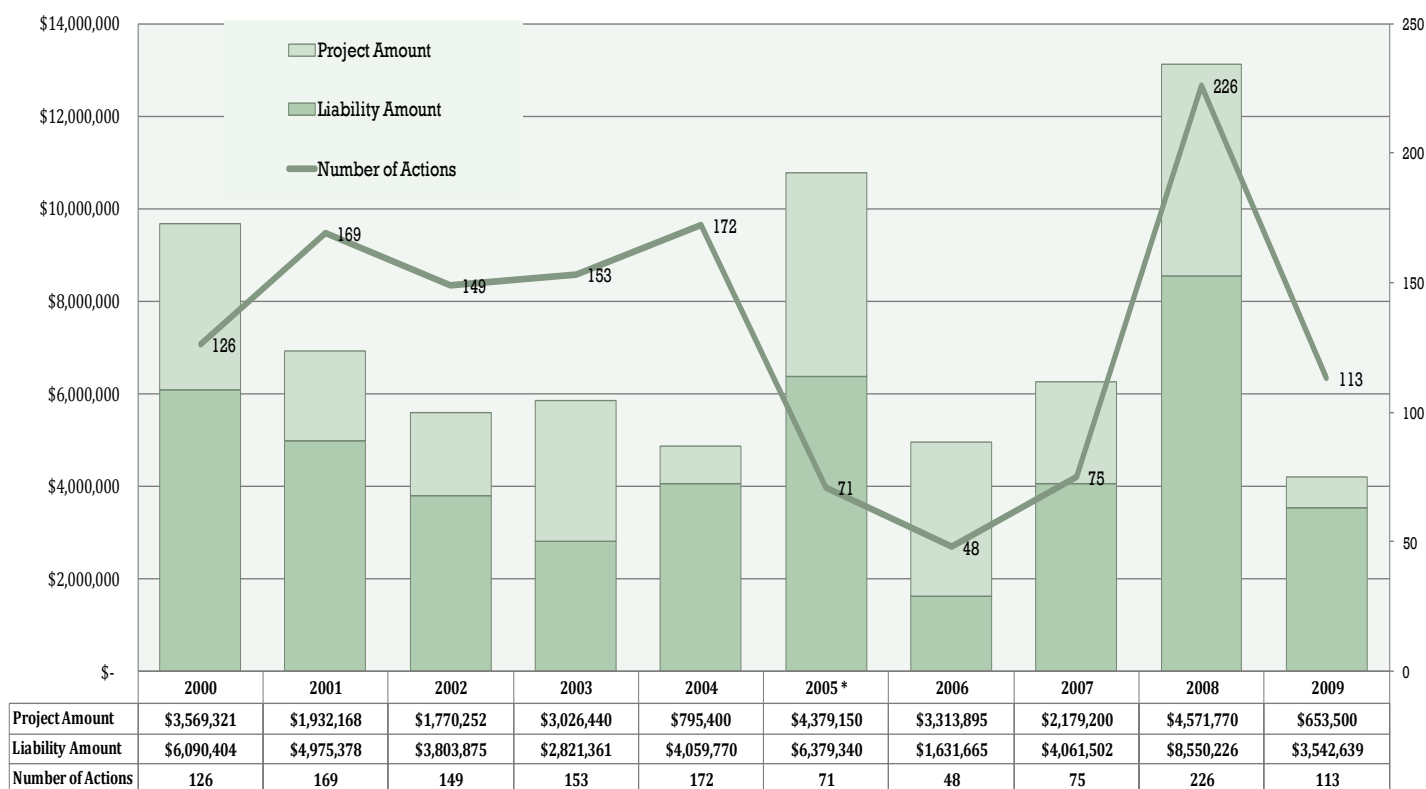
Information on penalties assessed and collected is available at the Water Boards CIWQS public reports site at:

<http://ciwqs.waterboards.ca.gov/ciwqs/readOnly/aclReport.jsp>

On average, roughly one-third of the penalties assessed are recorded as liability amounts that must be paid to the Water Boards' Cleanup and Abatement Account or the Waste Discharge Permit Fund. The remaining two-thirds of the amount was suspended pending the completion of supplemental environmental projects (SEP) or compliance projects.

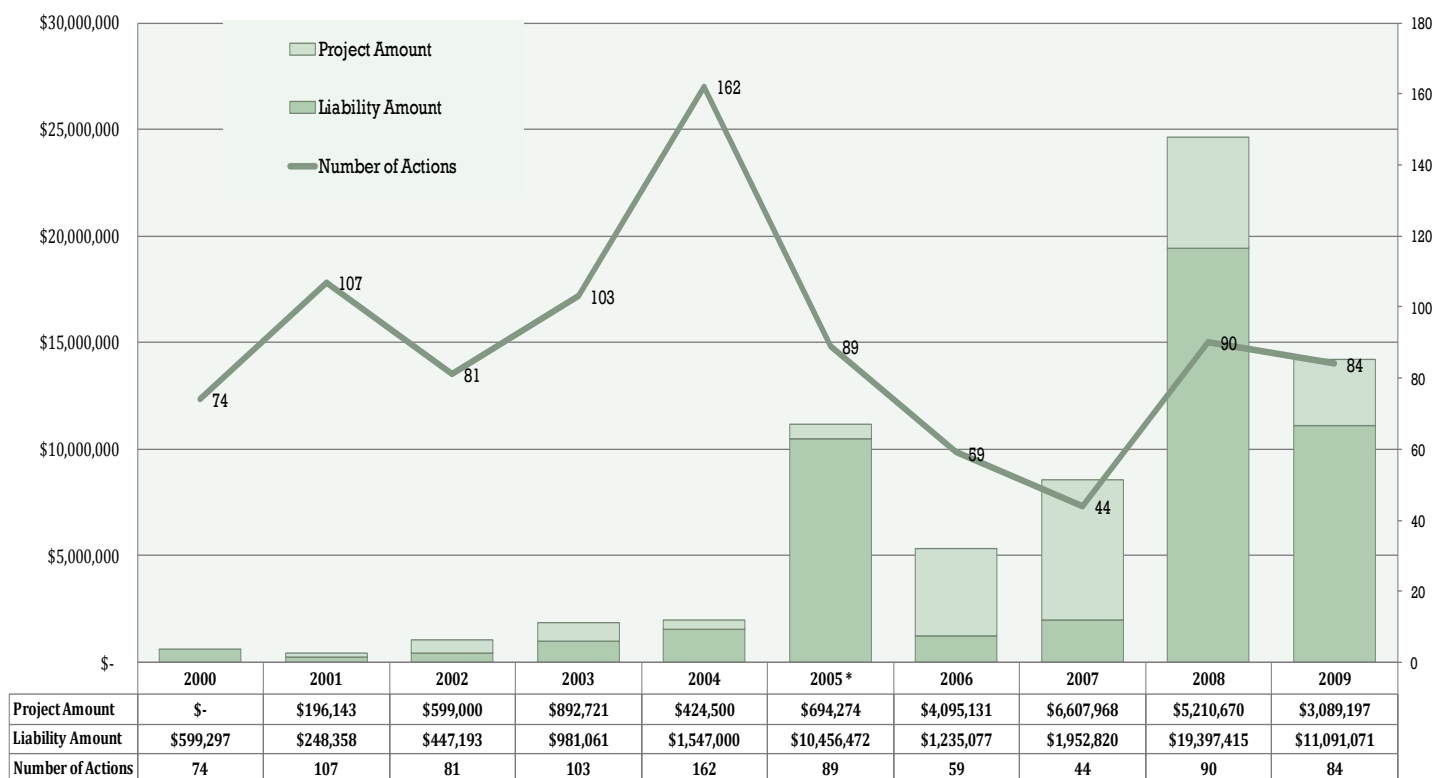
Trends in liabilities and projects assessed and the number of ACL actions issued and resolved (liabilities paid or projects completed) since 2000 are presented in Figure 22.

Figure 22: Penalties Assessed and Completed and Number of Actions Completed Trends



Trends in liabilities and projects assessed and the number of ACL actions issued but still not completely resolved (liabilities paid or projects completed) since 2000 are presented in Figure 23.

Figure 23: Penalties Assessed and Pending Resolution and Number of Actions Pending Resolution



*The liability amount for FY 05-06 includes an action taken by Region 3 for the Los Osos Community Services District (LOCSD) in the amount of \$6,626,000. The LOCSD is in bankruptcy so the Regional Water Board would need permission for the court to proceed with the administrative action.

Table 6: Cases Referred

Formal Enforcement Penalty Actions	2006	2007	2008	2009
Civil Cases Referred	2	4	9	4
Administrative Actions Initiated	64	90	271	171
Criminal Cases Referred*				

*Criminal cases are referred to the Attorney General's office. It is the decision of the Attorney General to pursue the case as a civil or criminal matter.

Section 5

5. Compliance and Enforcement Outcomes

The mission of compliance and enforcement programs is to ensure that compliance with laws and regulations is achieved and maintained over time. Measuring the outcome, or effect, of our activities is the most difficult part of performance measurement. Compliance rates assist managers to describe noncompliance problems in magnitude, frequency and duration and to evaluate the results of a program's compliance and enforcement strategies. Other recommended performance measures to assess the outcome of compliance and enforcement programs included measures to address the deterrent effects of enforcement recidivism, and environmental and economic benefits.

Approaches used to calculate compliance rates vary and must be tailored to each program. The approaches used in this section must be evaluated to determine if they reflect actual compliance for future reports. This report currently only addresses compliance rates among regions and programs based on information available in current Water Board databases. Data and

We define "compliance rate" as the number of facilities with one or more violations during the reporting period divided by the total number of facilities for which compliance has been assessed.

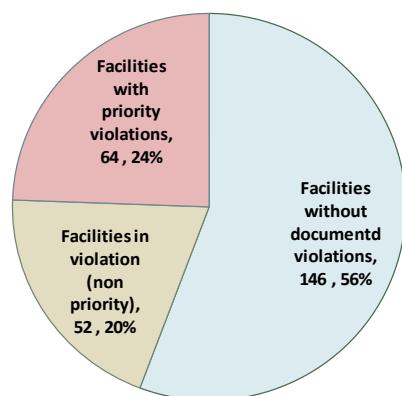
information is provided for the nine Regional Water Boards, but only for four of the five identified core regulatory programs. At this point it is not possible to provide information on compliance rates for the 401 Certification Program.

Compliance rates vary significantly among regions and programs. This variation may be in response to many factors including compliance efforts

initiated by the discharges,, compliance assistance provided by Regional Water Board staff, the level of enforcement resources dedicated to each program in each region, the number of inspections conducted and the number of SMRs reviewed.

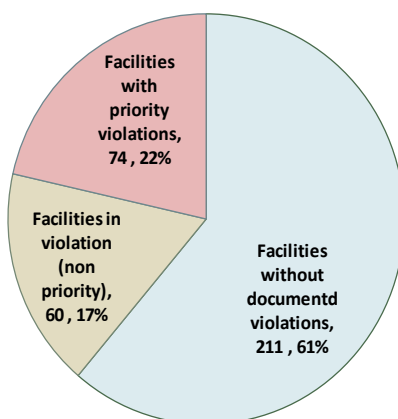
NPDES WASTEWATER PROGRAM

NPDES Major Facilities



The NPDES Wastewater program regulates approximately 1,900 diverse facilities discharging to surface waters. This count includes both major individual dischargers with a high threat to water quality and minor dischargers enrolled under a general permit. Compliance rates are provided for each one of the discharger groups. For the NPDES Wastewater program, we assume that every facility and permit has received some degree of compliance assessment either by a review of the monitoring reports or through inspections. This is particularly true for major and minor individual permits.

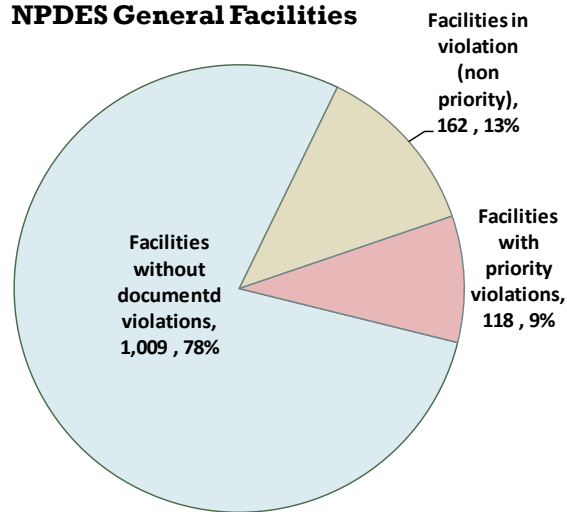
NPDES Minor Facilities



Minor dischargers can be regulated under individual Waste Discharge Requirements or enrolled under a general Waste Discharge Requirement permit. Compliance is assessed with self monitoring reports and with inspections.

The data shows a slightly better compliance rates for individual minor dischargers than for individual majors. We also see a significantly higher average number of violations per facility in violation for the individual minors than for the major dischargers.

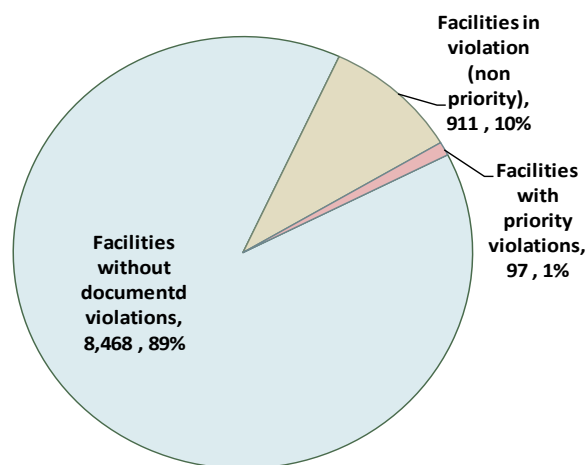
NPDES General Facilities



Dischargers enrolled under a general NPDES permit are a larger and more heterogeneous group. The threat to water quality for these groups of dischargers is lower and compliance assurance activities such as inspections and monitoring reports are less frequent. Inspections are conducted once every five years and the reporting frequency may be reduced to quarterly or annual reporting. Because of this, annual compliance rates are expected to be better than with other groups. Despite this fact, the data shows clear inconsistencies in data entry and violation documentation across the Regional Boards.

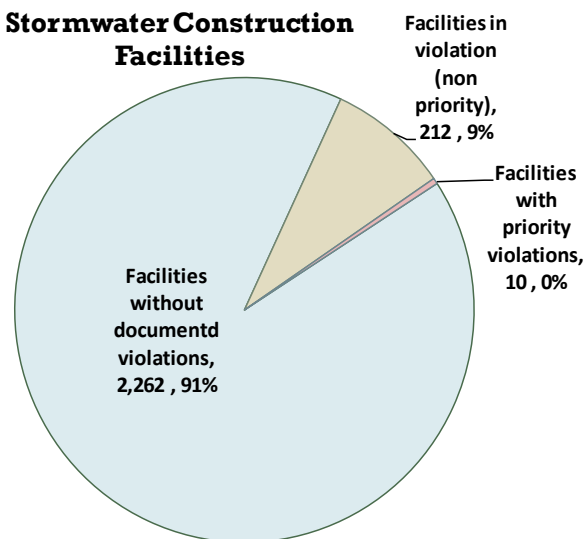
NPDES STORMWATER PROGRAM

Stormwater Industrial Facilities



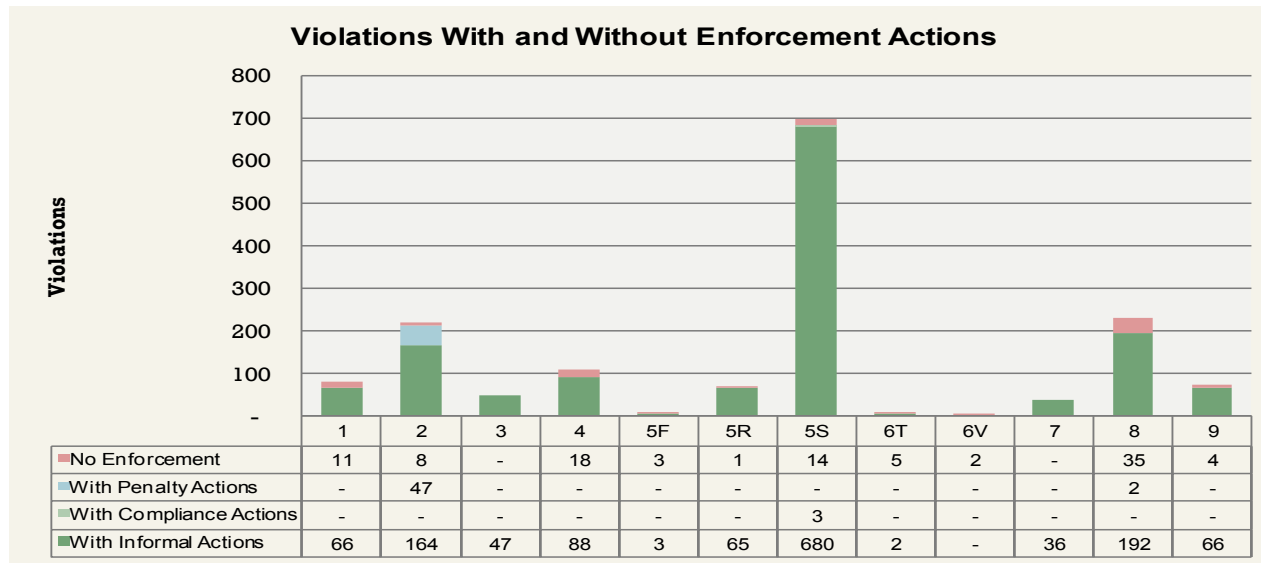
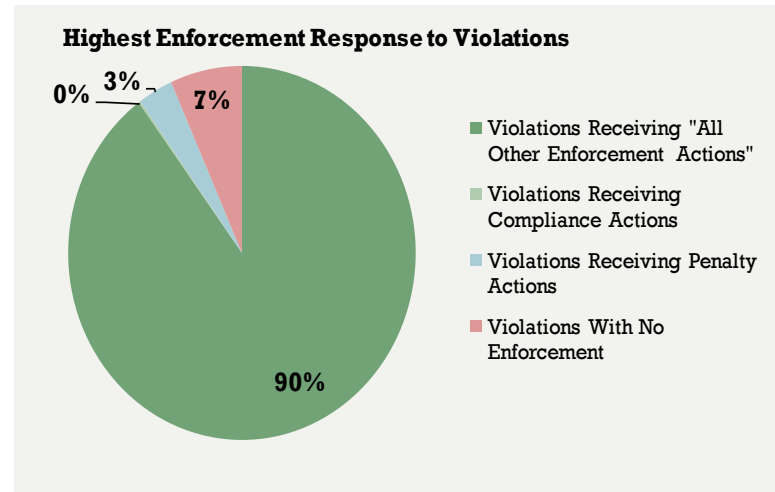
Compliance for dischargers enrolled under the industrial stormwater permit is assessed by reviewing monitoring reports and with site-specific inspections. For purposes of calculating compliance rates for industrial stormwater facilities we assume that every industrial facility has received some level of compliance assessment. Therefore the compliance rate is calculated by dividing the number of facilities with one or more documented violations by the total number of industrial facilities enrolled under the stormwater program. The use of the priority flag for violations is also highly inconsistent. Despite the data limitations, the stormwater program identified the largest number of facilities with at least one violation.

Stormwater Construction Facilities



The rate of compliance for construction activities enrolled under the stormwater program is calculated based on the number of facilities for which compliance was assessed (facilities inspected) and not the total number of facilities. Compliance assessment with NPDES Stormwater requirements at construction sites relies mostly on inspections for these reasons, and to make the compliance rate calculation as accurate as possible, we have only included the number of facilities inspected in the compliance rate calculation.

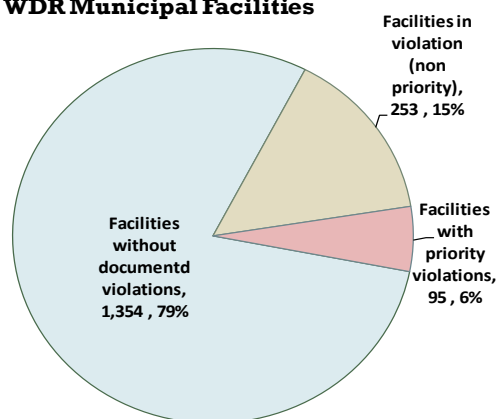
STORMWATER: 2009 ENFORCEMENT RESPONSE - ALL VIOLATIONS



WDR PROGRAM

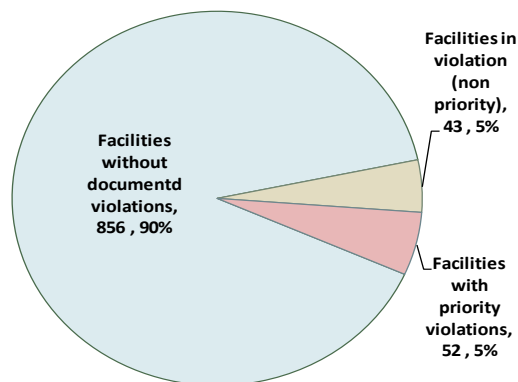
Information on compliance and enforcement outcomes is provided for municipal and industrial facilities only. Compliance rates for the WDR program vary dramatically among Regional Water Boards, from no facilities reported in violation in Region 2 (San Francisco Bay Regional Board) to 69% of the facilities in violation in Region 6.

WDR Municipal Facilities



The compliance rate was calculated assuming that each facility received some level of oversight. Overall, 20% of the 1,702 municipal waste facilities in the program had one or more violations during the reporting period. Twenty-nine of those facilities had chronic compliance problems with more than 25 violations each recorded in the reporting period. The priority flag for violations is used inconsistently by the Water Boards.

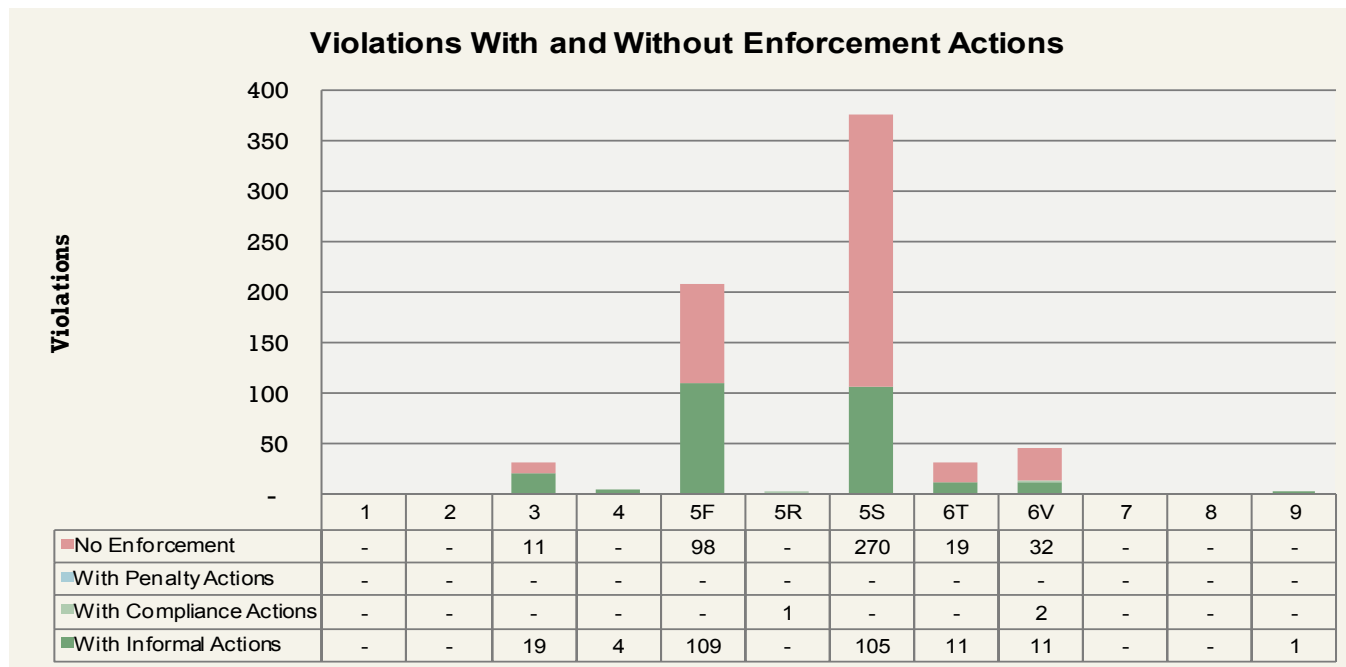
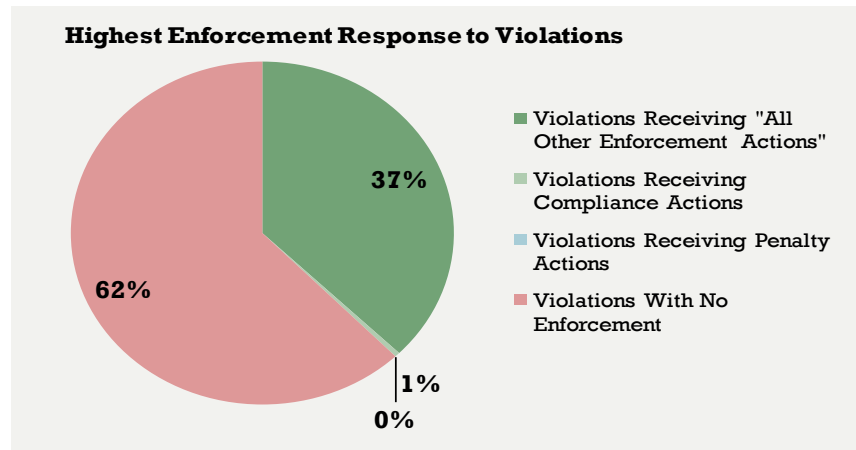
WDR Industrial Facilities



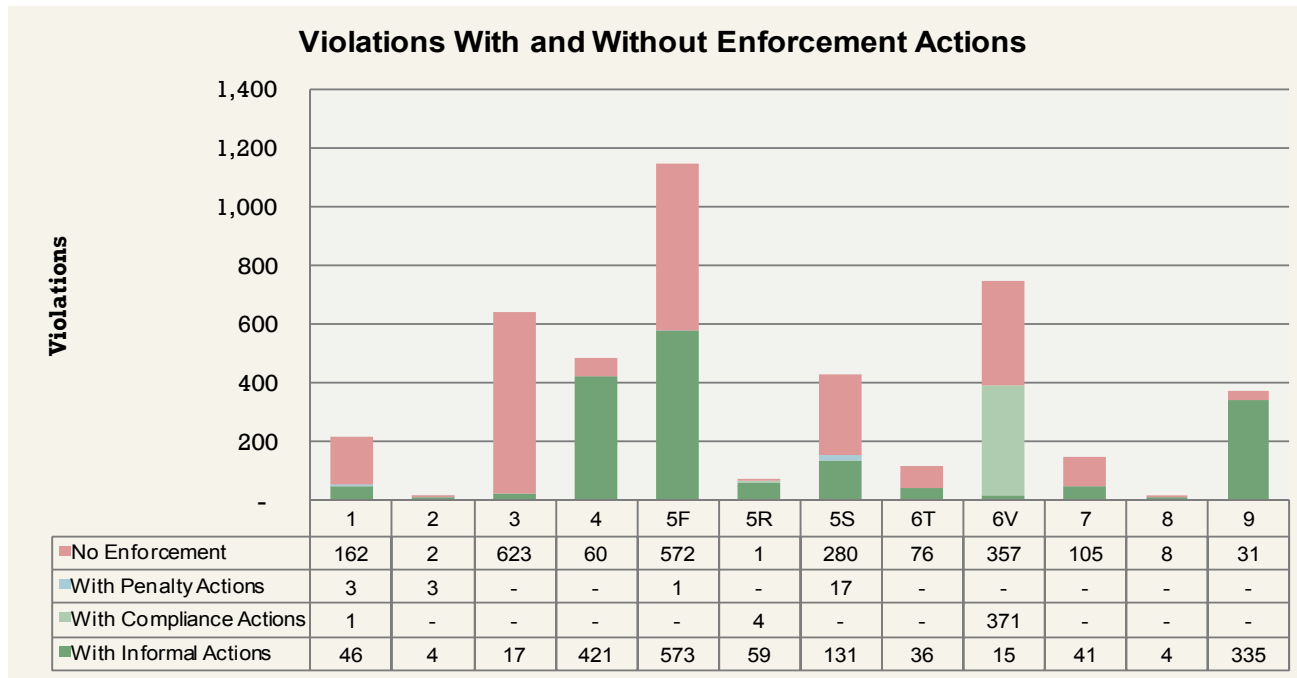
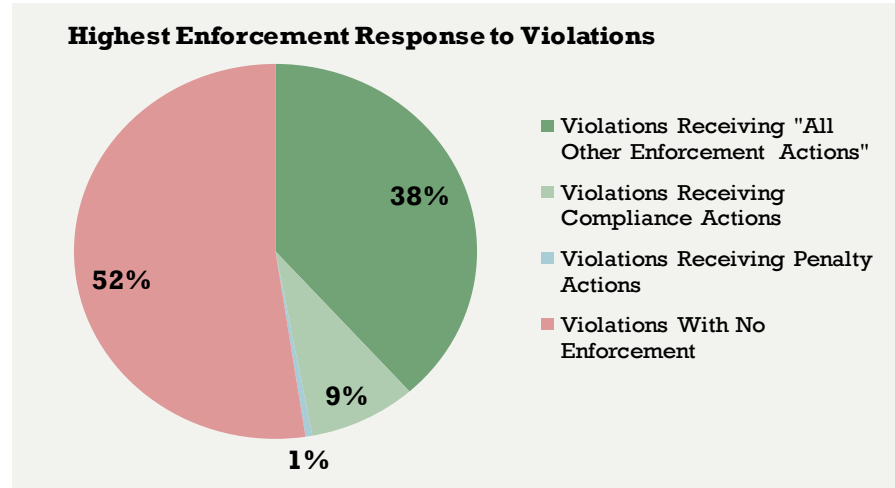
Compliance rates for industrial facilities regulated under the Waste Discharge Requirements program also vary significantly. We find the highest noncompliance rate in Sacramento although this may be due to better violation documentation procedures and data entry in CIWQS.

Compliance rates for regions 1, 2, 4, 8 and 9, with no facilities with one or more violations in the period, may not be completely accurate and it may be due to incomplete data entry and documentation of violations in CIWQS.

WDR: ENFORCEMENT RESPONSE – PRIORITY VIOLATIONS

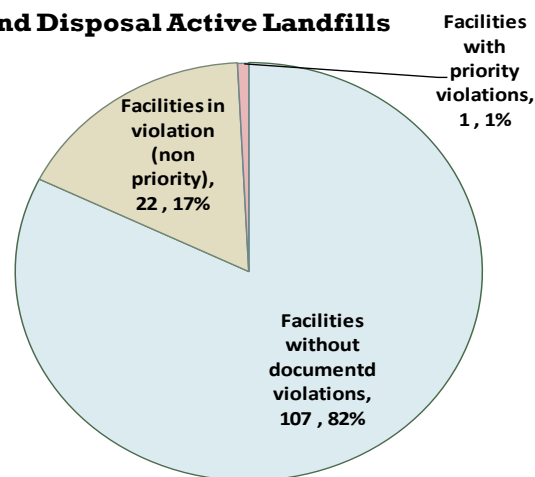


**WDR: ENFORCEMENT RESPONSE.
ALL OTHER VIOLATIONS**



LAND DISPOSAL PROGRAM

Land Disposal Active Landfills

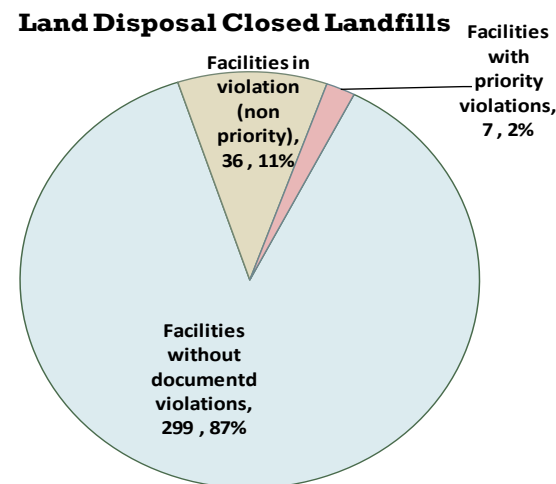


Compliance rates in this program vary significantly among Regional Water Boards. 23 facilities under the land disposal program were identified as having one or more violations for year 2009 in the database. This represents a noncompliance rate of 16%.

Similar to the NPDES Wastewater program, the compliance rate was calculated assuming that each facility received some level of oversight. The inspection rate for this program is 51%. The lack of violation information in some regions may be due to inconsistencies in data entry.

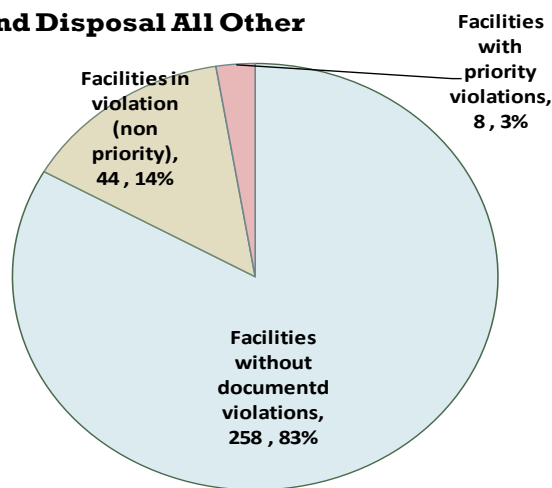
Once a Landfill is no longer accepting waste the Water Boards keep inspecting and regulating the facility to ensure compliance with waste discharge requirements. The non-compliance rate for closed landfills at 13% is slightly better than open landfills at 18% although this information varies by Regional Water Board

Land Disposal Closed Landfills

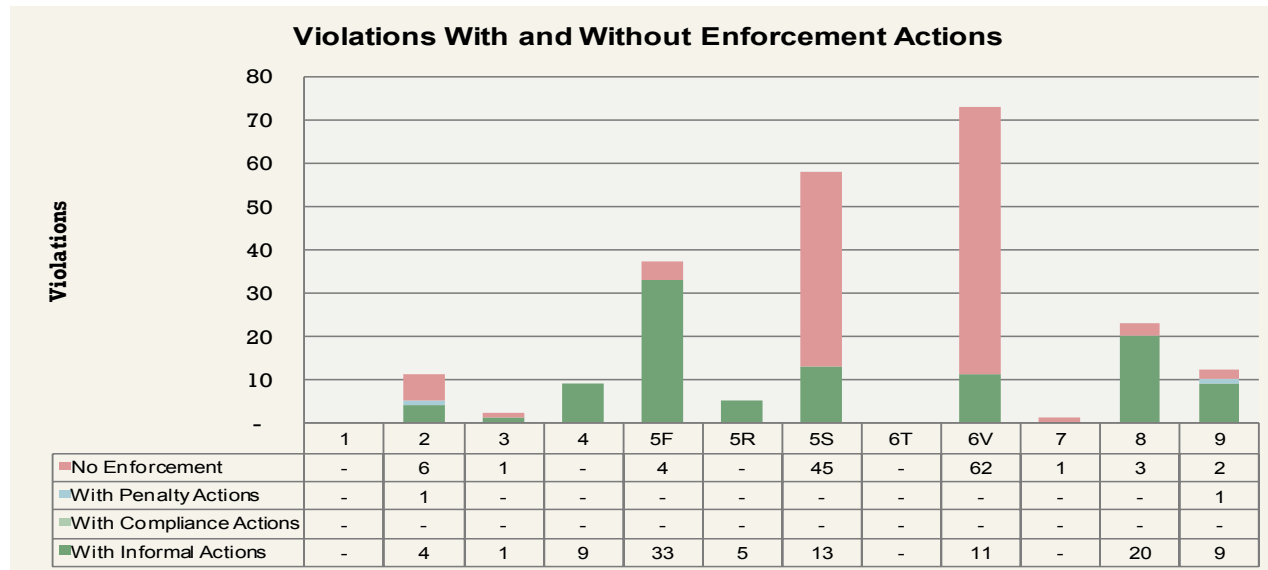
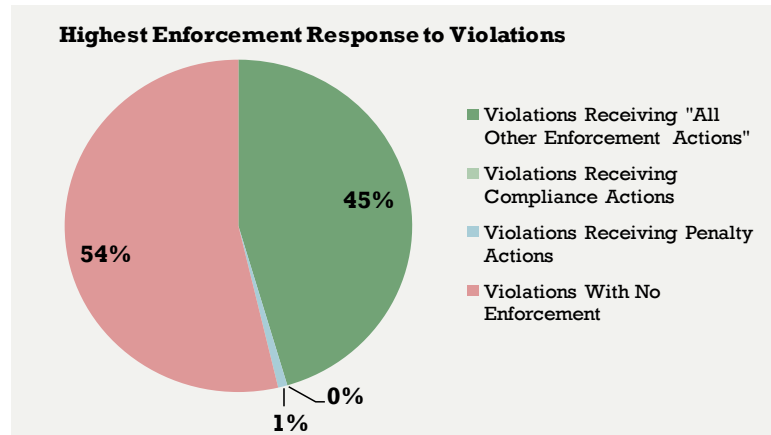


The Land Disposal program regulates of waste discharge to land for treatment, storage and disposal in waste management units. Waste management units include waste piles, surface impoundments, and landfills. All other land disposal facilities include surface impoundments, waste piles, land treatment units, etc.

Land Disposal All Other



LAND DISPOSAL: ENFORCEMENT RESPONSE - ALL VIOLATIONS

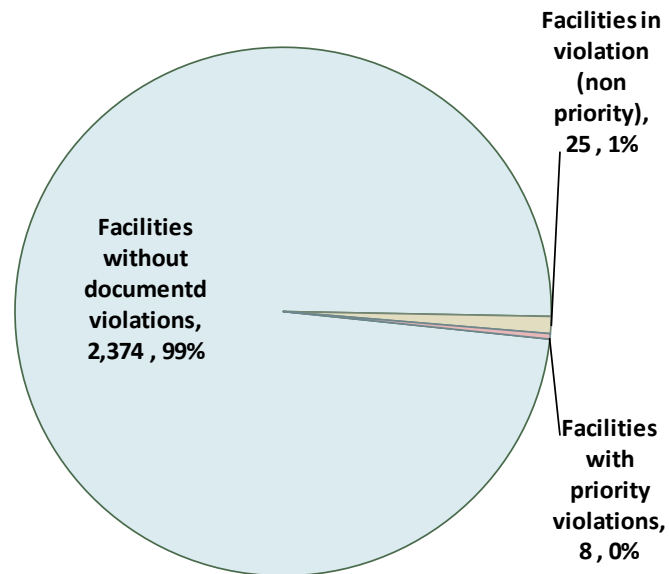


401 WETLANDS PROGRAM

This program regulates discharges of fill and dredged material under Clean Water Act Section 401 and the Porter-Cologne Water Quality Control Act.

This program has special responsibility for wetlands, riparian areas, and headwaters because these waterbodies have high resource value, are vulnerable to filling, and are not systematically protected by other programs. It is involved with protection of special-status species and regulation of hydro modification impacts.

401 Certification/Wetlands



Section 6

6. Update on Recommendations for Improvements in Water Boards' Enforcement Programs

After reviewing the summary enforcement statistics and recommendations received about the Water Boards' enforcement activities through public forums, the State Water Board's Office of Enforcement recommended a series of actions below for core regulatory enforcement program improvements in prior enforcement reports. Unlike the prior reports, this year's report does not include a "Recommendations" section. However, the Water Boards will continue to evaluate and identify improvements to its enforcement activities including structural and operational changes related to enforcement efficiency, consistency and prioritization.

Below is a status of actions taken to implement the recommendations identified in the prior enforcement reports ---FY 2006-2007 *Baseline Enforcement Report* and the FY 2007-2008 Annual Enforcement Report.

1. Create Procedural Consistency in Regional Water Board Enforcement Proceedings (FY 2006-07)

To provide fair and consistent enforcement, formal enforcement actions should follow procedures which are consistent across the Water Boards. The Office of Enforcement's prosecuting attorneys should work with the advisory counsel in the Office of Chief Counsel to develop uniform hearing notices and other administrative enforcement procedures.

Related Strategic Plan Action: SPA [Item 6.1.2](#)

Status: Completed

Uniform hearing notices and related documents have been created and are in use.

2. Prioritize Enforcement Actions to Address the Most Serious Threats to Water Quality (FY 2006-07)

Regional Water Boards should engage in bimonthly enforcement priority discussions with the Office of Enforcement to evaluate priority cases for enforcement action. The priorities selected should be consistent with the Water Quality Enforcement Policy. The Regional Water Boards should review and track cases that are identified as priorities. All Class 1 Violations (as defined in the proposed Water Quality Enforcement Policy) should have formal enforcement actions initiated within one year of detection by Water Board staff.

Related Strategic Plan Action Item: Revise Water Quality Enforcement Policy to address prioritization, SPA [Item 1.3.4](#)

Status: Completed

The *Water Quality Enforcement Policy*, adopted on November 17, 2009, contains a comprehensive section on enforcement prioritization.

3. Enhance Inspection and Enforcement Training (FY 2006-07)

The Water Boards should develop minimum training requirements for compliance and enforcement staff. Each compliance and enforcement staff person should have an individual development plan that specifies required training elements. The training should be administered through the Water Boards' Training Academy or Cal EPA's Enforcement Training Program. This training should also include information on CIWQS data entry procedures.

Related Strategic Plan Action Item: Assess training needs and deliver core curricula to enforcement staff, [SPA 7.1.1](#)

Status: Ongoing

The Water Boards' Training Academy completed the training needs assessment in January 2009. OE continues to work with Cal/EPA Training Committee and Water Board Training Academy on developing minimum training requirements.

4. Increased Field Presence of Water Board Staff (FY 2006-07)

Inspection frequencies should be specified and maintained for each regulated facility. Increased inspector field presence can be of great value in locating non-filers and illegal discharges.

Status: No action.

No additional work on this recommendation has occurred since the last annual enforcement report.

5. Evaluate Opportunities for Citizen Enforcement of the Water Code And Track Notices of Intent to Sue (FY 2006-07 and FY 2007-08)

The Water Boards' data shows that a large percentage of detected violations do not have any enforcement action associated with them. If the Water Boards are unable to address all water quality violations because of a lack of enforcement resources, the Water Boards should evaluate whether California residents should have the ability to bring actions to enforce the *Water Code* similar to citizen enforcement action provisions under the federal *Clean Water Act*.

Status: In progress.

The Office of Enforcement is now tracking citizen suit notices under the federal *Clean Water Act*. Tracking began in March 2009. For the months of March – December 2009, OE was made aware of 62 notices of Intent to File Suite under the citizen enforcement action provisions of the *Clean Water Act* by approximately 20 different parties. OE hopes to prepare an analysis of citizen suit activity once sufficient information has been collected.

6. Evaluate Establishing Minimum Penalties for Water Code Violations (FY 2006-07)

The Water Boards should evaluate imposing minimum penalties, similar to *Health and Safety Code* section 25299 and *Water Code* section 13350(e)(1), for the most serious water quality violations. *Health and Safety Code* section 25299 has been a significant factor in supporting enforcement cases and obtaining fines and penalties against non-complying owners and operators of UST systems. Adopting a minimum penalty regimen for other water quality violations would provide consistency in assessing monetary administrative and civil liabilities.

Status: In progress.

The Office of Enforcement is evaluating a possible mandatory minimum penalty process to apply to sanitary sewer overflows.

7. Create a Dedicated Enforcement Staff and Budget (FY 2006-07)

The Water Boards should develop a consistent way of identifying the enforcement staff and budget for each region and at the State Water Board. The Water Boards' electronic time-keeping system should track the time and cost spent on enforcement matters, particularly those which go to formal enforcement actions. The Water Boards should seek authority to recover the reasonable costs of enforcement as an assessment of liability (in administrative or civil liability matters) in addition to any monetary civil liability imposed in the enforcement proceeding.

Status: No action.

No additional work on this recommendation has occurred since the last annual enforcement report.

8. Increase the Use of the Attorney General's Office, District Attorneys, and City Attorneys in Enforcement Actions (FY 2006-07)

The Water Boards' enforcement program relies on administrative enforcement activity. There are matters and violations which warrant referral to other prosecuting agencies for the imposition of significant penalties, injunctive relief, and other actions. The Water Boards should better coordinate and communicate with these enforcement partners to ensure maximum deterrence. The Water Boards should evaluate whether additional legislative changes would help this effort.

Related Strategic Plan Action Item: Develop partnerships to leverage inspection and enforcement authority, [SPA 7.4.1](#)

Status: Ongoing.

[The Water Quality Improvement Initiative](#) contains provisions for increased use of outside prosecutors in support of water quality enforcement actions. OE, the Los Angeles Regional Water Board, and the Attorney General's Office continue to implement their pilot project to evaluate enhanced use of that office for water quality enforcement cases. There has been an increase in referrals to the Attorney General's Office which have resulted in significant judgments.

9. Reduce the Backlog of Enforcement Cases by Targeting MMP-Related Violations for Enforcement Priority (FY 2006-07)

Cases requiring MMPs continue to buildup in the Water Board enforcement system. These cases have been designated as an enforcement priority by the Legislature. The Water Boards should initiate action to significantly and

measurably reduce the backlog in 2008. The Water Boards should evaluate the effectiveness of MMPs in achieving compliance at regulated facilities.

Related Strategic Plan Action Item: Reduce the backlog of facilities subject to MMPs, [SPA 1.3.1](#)

Status: Completed.

The MMP Enforcement Backlog was launched in July 2008. The Water Boards have initiated enforcement at each of the facilities that were the target of the backlog reduction effort. The latest update can be found at http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/mp_update_030110.pdf

The Office of Enforcement is coordinating a team of State Board staff to address over 45 facilities in the Los Angeles Basin with unresolved MMP violations.

10. Evaluate Updating the Statutory Penalty Limits to Address Inflation (FY 2006-07)

The 2008 oil spill in the San Francisco Bay from the M/V *Cosco Busan* illustrated that the authorized penalty amounts for the illegal discharge of oil and petroleum products into the state's waterways have not been updated since 1984. Cost of living indices suggest that the penalties should be adjusted by at least 100% to account for inflation. To maintain the deterrent impact of our water quality protection laws as intended, the Water Boards should evaluate the need and effects of adjusting the penalty provisions for both inflation and the environmental costs that result from these illegal discharges.

Status: No action.

No additional work on this recommendation has occurred since the last annual enforcement report. However, there has been legislation introduced by other entities addressing this issue.

11. Develop and Implement Plans to Compel Participation in Key Water Board Regulatory Programs (FY 2006-07)

As the Water Boards develop new initiatives and programs addressing emerging contaminant and pollution threats to water quality, it is essential for the success and integrity of these regulatory approaches to have full participation of the newly regulated entities. The Water Boards should develop plans, as a part of any new regulatory initiative or program, to target nonparticipants for early and well-publicized enforcement actions.

Status: In progress.

The Water Boards have begun considering strategies to compel participation in new program areas, however, more work is needed. For example, with the implementation of the Pre-Production Plastic Debris Program, the Water Boards are rolling out a strategy that use inspections to identify facilities subject to the Industrial General Permit (IGP) for storm water discharges, but have not yet enrolled. This strategy is primarily being implemented in the Los Angeles region.

12. Develop a Uniform Tracking and Reporting Mechanism for Illegal Discharges That Do Not Fall Within One of the Current Core Regulatory Programs (FY 2006-07)

The Water Boards should work with stakeholders to develop a consistent mechanism for recording violations and tracking enforcement response to the violations. Based on a baseline of verifiable information, the Water Boards can better determine the extent of the problem and develop more appropriate regulatory and enforcement responses.

Status: No action.

No additional work on this recommendation has occurred since the last annual enforcement report.

13. Encourage Flexibility in the Allocation of Resources to Target Priority Needs (FY 2006-07)

Encourage flexibility in the allocation of resources within the Water Boards to focus on specific regional and statewide issues and priorities, recognizing that a shift in resources away from a program area will result in a corresponding reduction in the level of effort for that area. Resource allocation modifications must be tracked to account for changing priorities.

Status: Completed.

The Water Boards have redirected staff, on an as-needed basis, to address target priority needs over the past several years. Examples include the MMP Initiative of 2009, UST Fraud , Waste, and Abuse Initiative of 2010.

14. Consolidate Legal Representation of Regional Enforcement Teams in the Office of Enforcement (FY 2007-08)

At this time the Office of Enforcement provides primary legal assistance on core regulatory enforcement matters to Regions 3, 6, 7, 8 and 9 and shares legal assistance enforcement responsibilities with the Office of Chief Counsel in

Regions 1, 2, 4, and 5. Attorneys within the Office of Enforcement appear in all regions and are not specifically assigned to a particular region. Rather than split these legal representation functions between two legal offices, the Water Boards overall enforcement goals will benefit from the consolidation of prosecutorial expertise within a single legal office where its primary mission is enforcement. As necessary, resources should be directed to the Office of Enforcement to ensure that the Regional Boards receive, at least, the same level of legal enforcement support that they currently receive.

Status: Completed.

The regional enforcement teams are benefited by having legal counsel that specialize in the evaluation and presentation of enforcement matters, both straightforward and complex, and who are familiar with the enforcement policies and procedures.

15. Enhance State Water Board Assistance to Enforcement Staff in Determining Economic Benefit from Water Quality Violations (FY 2007-08)

The State Water Board should identify a team of economists, scientists and engineers to assist the Regional Water Board enforcement staff in assessing the economic benefit of noncompliance stemming from common water quality violations including but not limited to unauthorized sanitary sewer overflows, illegal storm water discharges, and wastewater treatment plant violations.

Status: Completed.

The Office of Enforcement also has contracted for additional technical support for economic benefit determinations for violations by waste water treatment facilities and collection systems.

16. Target and Address Data Issues that Adversely Impact Effective Reporting of Enforcement Outputs and Outcomes (FY 2007-08)

As a priority management action, the State Water Board should lead an effort to identify and correct data issues as they affect enforcement-related information. The use and evaluation of enforcement data will be impeded because of defects within the data used by the Water Boards for enforcement data tracking and analysis, particularly with regard to data that addresses enforcement outputs and outcomes.

Status: In progress.

The Water Boards initiated an Enforcement Data Summit which identified data improvement targets. This work is ongoing.

17. Evaluate the Development of Criminal Investigation Capability to Address Water Quality Violations (FY 2007-08)

Water Code section 13387 provides for criminal sanctions for specified water quality violations. *Health and Safety Code section 25299* provides criminal sanctions for violation of underground storage tank requirements. The Water Boards, however, have no specialized investigation staff to support a criminal investigation related to water quality violations or underground storage tank violations. The process for obtaining authority to employ criminal investigators is arduous. The need for such investigators should be thoroughly evaluated, and if the need is justified, the State Water Board should obtain permission to employ specialized investigators for use throughout the Water Boards.

Status: Completed.

The Office of Enforcement developed a proposal for a pilot project for criminal investigation staff. The proposal has not been brought to the State Board for action.

18. Create an Auditing Function to Investigate and Prosecute Fraudulent Use of Grant Funds or UST Cleanup Funds (FY 2007-08)

Given the increased demand for and availability of public funds for water quality improvement projects and UST site remediation projects, the State Water Board should create an inspection and auditing office to investigate and prosecute alleged fraudulent use or misappropriation of grants awarded by the State Water Board or funds provided by the UST Cleanup Fund for underground storage tank remediation activities. The creation of such an office or function should reduce the misuse of such funds and thereby ensure the availability of such funds for their intended purposes. The State Water Board's strong interest in providing public funds should not prevent the State Water Board from establishing appropriate procedures to ensure the legitimate use of such funds. Studies of other government funding programs have estimated that without strong controls and an enforcement element which punishes fraud or misappropriation, the improper use of those public funds may be as high as 40%.

Status: Completed.

A Fraud Waste and Abuse Prevention Team has been created in the Office of Enforcement as a pilot project. This team will address the potential fraud, waste, and abuse of funds provided by the UST Cleanup Fund.

19. All Enforcement Related Information Must be Documented by the Water Boards in the CIWQS Database (FY 2007-08)

The Water Boards inconsistently record compliance and enforcement activity in the CIWQS database. CIWQS has undergone substantial improvement in the last several years and is the primary reporting tool for the Water Boards. Most programs, however, other than the NPDES wastewater programs, inconsistently use this system. Additionally, some Regional Water Board are more current in their data and use of the system than others. Finally, activities directly performed by contractors must be recorded as well (such as NPDES facility inspections conducted by US EPA contractors). Office of Enforcement staff will work with the Office of Information Management Analysis to ensure that inspections conducted by contractors can be distinguished in CIWQS from inspections conducted by Regional Water Board staff.

Status: Completed

The Water Quality Enforcement Policy (Policy), updated in November 2009 and in effect as of May 2010, requires that all violations and enforcement data be documented in the appropriate Water Board data management system within a specified timeframe. See Section XI. of the Policy at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

20. Enforcement Actions to Assess Monetary Penalties Should be Accompanied by Actions to Return Dischargers to Compliance for Outstanding or Continuing Violations (FY 2007-08)

An informal evaluation of enforcement action data for the NPDES Program identified that very few violations received enforcement to correct conditions that led to violations. Very few actions that resulted in the monetary assessment of penalties (ACLs) were accompanied by actions to return the discharger to compliance such as Cleanup and Abatement Orders or Cease and Desist Orders. To the greatest extent possible, the Water Boards should not limit enforcement actions to the assessment of monetary liability in situations where there is an outstanding or continuing violation of a requirement which significantly impacts or threatens to impact water quality.

Status: Completed

The Water Quality Enforcement Policy (Policy), updated in November 2009 and in effect as of May 2010, requires that where necessary, enforcement actions shall also ensure a timely return to compliance. See Section I.C. of the Policy at: http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/enf_policy_final111709.pdf

21. Approaches to Address Chronic Poor Operation and Maintenance at Wastewater Treatment Plants Serving Small Communities Should be Developed and Implemented (FY 2007-08)

All wastewater treatment plants must meet minimum operation and maintenance criteria to achieve compliance with federal and state permit requirements. Small communities face unique financial and facility operation challenges due to the small number of fee payers available to support new plant construction, upgrades and ongoing management responsibilities. The State Water Board adopted a small community strategy in 2008 to better assist these communities in achieving compliance. The Water Boards should evaluate the effectiveness of these strategies and propose a comprehensive approach that addresses common fiscal and operational deficiencies. An element of this approach should explore the development of a system of "general permits" to address similar activities at small community waste water treatment plants, such as the use of pond systems and "package plants."

Status: In Progress

The State Water Board adopted a Small Community Strategy in 2008 to assist small and/or disadvantaged communities with wastewater needs. In 2009, staff presented an update to this policy to the Board which summarized the status of prior recommendations and proposed a number of new recommendations. To address operational deficiencies, several new workshops are being offered this calendar year. However, suggested changes to address permitting and operator certification issued have been placed on hold due to resource constraints.

22. Conduct an Evaluation of the Waste Discharge Requirements Program to Examine the Declining Compliance and Enforcement Trend Data Presented in this Report and Make Recommendations (FY 2007-08)

The data presented for the waste discharge requirements program contained in the Compliance and Enforcement Outputs section demonstrates a decline in program activity for several years. The Water Boards should conduct a comprehensive evaluation to identify the causes of this decline. The evaluation should include data entry and data quality issues, resource distribution across programs as well as the activities conducted by program staff. The results of this evaluation, including recommendations, should be presented in next year's Annual Enforcement Report.

Status: Scheduled to begin in August 2010

The State Water Board's Division of Water Quality is preparing a workplan that will specify the scope and schedule of the comprehensive evaluation. The evaluation will extend beyond direct program administration and cover the program's effectiveness in protecting the State's groundwater resources. The evaluation will make recommendations that, when implemented, should regulate potential sources of groundwater contamination more effectively and result in more timely and targeted enforcement actions against entities that do not comply with groundwater protection standards.

23. Prepare an Analysis of the Authorities of the Water Boards to Require Actions that Promote Water Conservation, Water Recycling, and Urban Water Reuse (FY 2007-08)

The Water Boards have proposed a series of measures in response to the [Global Warming Solutions Act \(AB 32\)](#) and ongoing drought conditions to reduce water consumption and enhance locally sustainable water supplies. Many of the actions that the Water Boards and other state agencies are taking to implement these measures rely on voluntary participation and financial incentives. An analysis of the enforcement tools available to the Water Boards to require these and similar measures will shape additional strategies to require reductions in water consumption and enhance local water supplies.

Status: In Progress

The Water Boards are conducting this analysis in a piecemeal fashion as the specific measures contained in the Scoping Plan, adopted by the Air Resources Board, and the California Adaptation Strategy, prepared by the California Natural Resources Agency, are being implemented.

Section 7

7. Annual Enforcement Priorities for 2010

The new Water Quality Enforcement Policy requires the identification of enforcement priorities on an annual basis. The Water Boards are committed to timely implementation of this policy and identifying enforcement priorities for both its water quality and water rights programs, recognizing that most priorities will be implemented over multiple years. These priorities are similar in concept with the National Enforcement Initiatives established by the United States Environmental Protection Agency (USEPA). These priorities determine the focus for water quality enforcement efforts by the State and Regional Water Boards and water rights enforcement by the State Water Board, recognizing that the individual regions may have other priorities based on special issues facing those regions. The overarching priorities described below will be further enhanced by specific initiatives and actions at both the State and Regional Water Boards.

As can be seen from the priorities identified by virtually all of the Regional Water Boards, groundwater protection is critical for the Water Boards and the State of California. In a state where most of the population relies on groundwater for a portion of its drinking water, this makes sense. A major 2010 Water Board initiative (and a recommendation from last year's enforcement report) is a thorough evaluation of the effectiveness of the Water Boards' groundwater protection programs. The implementation of recommendations resulting from the evaluation should better protect groundwater and drinking water from potential sources of contamination and result in more timely and targeted enforcement actions against entities that do not comply with groundwater protection standards. This evaluation may also lead to the establishment of a statewide priority in the 2011 Annual Enforcement Report that includes measurable output(s) for groundwater protection.

SANITARY SEWER OVERFLOWS:

Sanitary sewer overflows (SSOs) result in discharges of untreated sewage, bacteria, pathogens, hazardous materials, and industrial wastewater. The causes of the discharges include aging infrastructure, undersized facilities, inadequate operation and maintenance, faulty equipment, and poor system design.

The State Water Board adopted Statewide General Waste Discharge Requirements (WDRs) for Sanitary Sewer Systems, Water Quality Order No. 2006-0003 (Sanitary Sewer Order) in May 2006 to provide a consistent, statewide regulatory approach. The Sanitary Sewer Order requires public agencies that own or operate sanitary sewer systems to develop and implement sewer system management plans (SSMPs) and report all SSOs.

There have been over 17,000 SSO incidents reported since January 1, 2007 from approximately 1,100 sanitary sewer systems currently enrolled under the Sanitary Sewer Order. Of the approximately 57 million gallons of waste associated with these incidents, about 46 million gallons reportedly reached surface waters. Recent audits revealed that some dischargers are violating the Sanitary Sewer Order and are underestimating the volume of sewage spilled and/or failing to report SSOs. Further, there are numerous sanitary sewer collection systems in the State that have not yet enrolled for coverage under the Sanitary Sewer Order.

The Water Boards will target enforcement resources to address both SSOs and violations of the Sanitary Sewer Order to decrease both the volume and number of SSO discharges through compliance with improved system operations, maintenance, management and performance requirements.

Calendar Year 2010 Performance Outputs:

- Achieve 85% of all enrollees monthly reporting their SSO or No Spill Certifications. The percent reporting has peaked at 80%, but has since declined.
- Achieve a 75% compliance rate for SSMP element certification. The current compliance rate averages approximately 60%.
- Conduct 15 onsite compliance audits to identify Sanitary Sewer Order violations and implement necessary enforcement response.
- Initiate formal enforcement against all SSO incidents where there is a discharge of sewage that reaches surface waters in excess of 50,000 gallons.

More information on the Sanitary Sewer Order can be found at:

http://www.waterboards.ca.gov/water_issues/programs/sso/index.shtml

STORM WATER:

Storm water runoff from urban areas, industrial facilities and construction sites, which is most often discharged untreated, significantly impairs water quality in rivers, lakes, streams, reservoirs, estuaries, near-shore ocean environments, and wetlands. Unmanaged soil disturbance and vegetation removal that occurs during construction increases erosion that results in sediment discharges into waterways. As storm water flows over urban areas and construction and industrial sites, it picks up and carries other pollutants including pathogens, pesticides, petroleum products, toxic chemicals, and debris from the land into water bodies that serve as drinking water, aquatic habitat, and public swimming areas.

The Water Boards regulate storm water discharges under the Municipal Storm Water Permitting program and a variety of statewide general permits including:

- Industrial Storm Water General Permit Order 97-03-DWQ
- Construction Storm Water General Permit Order 2009-0009-DWQ (effective July 1, 2010)
- Caltrans Storm Water Permit Order 99-06-DWQ
- Small Municipal Separate Storm Sewer System Permit Order 2003-0005-DWQ

Enforcement of these permits is a high priority, particularly in areas where discharges may cause or contribute to water quality impairments.

Calendar Year 2010 Performance Outputs:

- For coastal regions, complete compliance assessment of all plastics-related facilities enrolled under the Industrial Storm Water General Permit that were issued an investigation order to conduct a self-compliance evaluation and initiate enforcement actions for all facilities that did not comply with the Permit.
- Complete audits of four Caltrans' Districts.
- For Regions with significant highway construction activity, assess project-specific compliance with Caltrans Storm Water Permit requirements and initiate enforcement actions for violations.

More information about the storm water program can be found at:

http://www.waterboards.ca.gov/water_issues/programs/stormwater/index.shtml

MANDATORY MINIMUM PENALTIES:

In 1999, the California Legislature passed SB 709, which required that certain State Water Code violations be subject to mandatory minimum penalties (MMPs). While the Water Boards did begin assessing MMPs after the passage of the bill, a variety of factors led to a backlog of unresolved cases. In 2008, Water Boards commenced a statewide Initiative for MMP enforcement, with the goal of substantially reducing or eliminating the MMP backlog of more than 12,000 violations accumulated between Jan. 1, 2000 and Dec. 31, 2007. The Water Boards have significantly reduced the MMP backlog, and in some regions the backlog has been completely eliminated. As of December 15, 2009, the Water Boards have taken enforcement activities consisting of 135 Administrative Civil Liability (ACL) complaints and 315 expedited payment letters. Out of these 450 enforcement actions initiated, 254 have been completely resolved or settled which has resulted in total liabilities of \$ 18,868,150. Another 40 actions have been dismissed as a result of the updated Water Quality Enforcement Policy.

The goal of this multi-year enforcement priority is to eliminate all existing MMP backlog violations and ensure that all future violations are addressed within 18 months of discovery.

Calendar Year 2010 Performance Outputs:

- State Water Board staff will prepare 45 ACL complaints or orders imposing liability for unresolved MMP violations in the Los Angeles region for the backlog period by December 31, 2010.
- Los Angeles Regional Water Board staff will prepare 40 ACL complaints or orders imposing liability for unresolved MMP violations for the backlog period by December 31, 2010.
- Address each new MMP violation within 18 months of discovery.
- Create an electronic notification system to remind dischargers of upcoming reporting deadlines.

The update on the Water Boards' MMP Initiative is available on-line at http://www.waterboards.ca.gov/water_issues/programs/enforcement/docs/mp_update_030110.pdf

WATER DIVERSIONS:

The State Water Board's water rights program ensures the proper allocation of California's water and its efficient use while protecting in-stream beneficial uses. The water rights enforcement activities are an important component of this mission to ensure compliance with water right permit and license conditions, and to identify those parties who are illegal diverting or storing water without a right.

Originally intended to address concerns over diversions of water from the Sacramento-San Joaquin Delta Estuary, Senate Bill X7-8 was signed into law in November 2009, authorizing 25 new state-wide water right enforcement positions to augment existing enforcement staff. SB X7-8 also enacted new administrative penalties for failure to file Statements of Water Diversion and Use or for filing false information. In May 2010, the State Water Board adopted a Policy for Maintaining Instream Flows in Northern California Coastal Streams (Policy) as part of its State policy for water quality control for the purposes of water right administration. The development of this policy was required by AB 2121 (Stats. 2004) and applies to the counties of Marin, Sonoma, and portions of Napa, Mendocino and Humboldt, encompassing (1) coastal streams from the Mattole River (originating in Humboldt County) to San Francisco, and (2) coastal streams entering northern San Pablo Bay. The Policy focuses on measures that protect native fish populations, with a particular focus on anadromous salmonids and their habitat.

The State Water Board will work with the newly appointed Delta Watermaster to ensure reporting of all delta diverters over the next five years. Under the Policy, our efforts will reduce the number of illegal ponds on Class I Streams that adversely affect native fish populations in the North Coast.

Calendar Year 2010 Performance Outputs:

- Begin work with the new Delta Watermaster and other agencies to identify existing diversions within the Delta Lowlands and confirm that each diversion has an adequate measuring device tracking monthly diversion amounts and that these monthly diversions are reported to the State Water Board.
- Work with the Department of Fish and Game and the National Marine Fisheries Service to initiate investigation and corrective action at 25 illegal reservoirs on Class 1 streams.

The policy may be found at:

http://www.waterboards.ca.gov/waterrights/water_issues/programs/instream_flows/docs/ab2121_0210/adopted050410instreamflowpolicy.pdf

ADDITIONAL REGIONAL WATER BOARD ENFORCEMENT PRIORITIES

This section reflects enforcement priorities that a Regional Water Board has identified that are in addition to the statewide priorities described above.

Region 1

- Emphasis will be placed on enforcement of violations subject to discretionary penalties associated with the land disposal of treated wastewater.
- Enforcement will be focused on violations of TMDL implementation provisions for nonpoint source discharges and those discovered through complaint investigations.

Region 2

- Pursue enforcement against recalcitrant parties who are not cleaning up soil and groundwater pollution in a timely manner, particularly where there are clear threats to human and/or ecological health.
- Pursue enforcement for violations of effluent toxicity limits or chronic violations of other limits by wastewater dischargers.
- Pursue enforcement for the unpermitted filling of wetlands or streams and require restoration and/or mitigation for such actions.
- Swiftly respond and enforce against spills or illicit discharges to San Francisco Bay and its tributaries.

Region 3

- Take enforcement actions to ensure compliance with Agricultural Regulatory Order related to water quality standards, enrollment, fees, and reporting requirements.
- Work with other state and local agencies to identify and prosecute illegal conversion of wetlands and riparian habitat to other uses.

Region 4

- Increase enforcement activity by expanding the 401/UST/Remediation pilot to other programs to investigate unpermitted dischargers and facilities not in compliance with regulatory requirements and work with OCC, OE and the AG's office to take formal enforcement actions.

Region 5

- Emphasize enforcement of violations on Irrigated Lands and at Confined Animal Feeding Operations that threaten groundwater and surface water resources.
- Emphasize enforcement of violations of existing formal enforcement orders.
- Take enforcement against dischargers that fail to submit complete self monitoring reports.

Region 6

- Enforce violations of WDRs for discharges that affect underlying groundwater and issue enforcement actions to eliminate the source of the pollution, provide alternative water if pollution is adversely affecting use, and begin groundwater cleanup.
- Enforce requirements to submit and implement plans to increase capacity of municipal treatment and disposal facilities before capacity is exceeded to prevent permit violations and adverse impacts to beneficial uses.
- Enforce requirements to submit complete self monitoring reports at facilities with chronic or significant violations.

Region 7

- Issue Time Schedule Orders to the Cities of Calexico and El Centro (Imperial County) for the earthquake damages from the 7.2 Mexicali event (April 2010) at their wastewater treatment plants
- Eliminate the backlog of actions for Imperial County dischargers that used uncertified labs to analyze effluent bacterial samples.

Region 8

- Enforcement of the provisions of the recently adopted MS4 permits will emphasize compliance with the low impact development (LID) permit aspects to insure implementation of the appropriate control measures for new developments and significant redevelopment projects.
- Initiate enforcement against approximately 40 agricultural dischargers that have failed to comply with the 13267 Orders requiring dischargers to submit a plan for compliance under the Nutrient TMDL Implementation Plan for Canyon Lake and Lake Elsinore.

Region 9

- Emphasize enforcement of violations of existing formal enforcement orders.
- Take enforcement action against violations with severe adverse or potentially adverse effects on public health or environment.
- Pursue enforcement of unauthorized discharges into 303(d) listed surface waters, Areas of Special Biological Significance and other high priority surface waters or high priority ground water basins.

Section 8

8. Initiatives for 2010

A) Government-Owned/Operated Tank Enforcement (GOT) Initiative

Compliance with underground storage tank (UST) leak prevention laws and regulations at government-owned/operated facilities has been an issue for some time. The problem was recognized by the federal government in 2005 when it passed the Energy Policy Act, which included the UST Compliance Act. The UST Compliance Act required a one-time report concerning the compliance status of government-owned and/or operated USTs throughout the nation. In August 2007, the State Water Resources Control Board reported to the United States Environmental Protection Agency ("USEPA") that 415 government facilities (with a total of 634 USTs) were non-compliant.

The most common violations were failure to operate or maintain release detection equipment and failure to maintain and test secondary containment. These violations are considered to be significant because failed monitoring equipment or failed secondary containment threatens the environment by limiting the ability to detect or contain a release of hazardous substances.

This initiative will target noncompliance with state and federal leak prevention laws at facilities that are owned and/or operated by government agencies through targeted inspections and enforcement. The goals of the GOT Initiative are to:

- Eliminate the compliance and enforcement disparity between privately and publicly owned and/or operated underground storage tanks (USTs);
- Enhance consistency throughout the UST program of the State Water Board, on an ongoing basis, to ensure the processes are effective, efficient, and predictable, and to promote fair and equitable application of laws, regulations, policies, and procedures (consistent with Goal 6 of the Water Board's Strategic Plan); and
- Ensure that human health and the environment are not adversely affected by releases of hazardous substances from USTs owned/operated by government agencies.

Administrative civil enforcement is not available to address UST violations with either injunctive relief or civil liability. Those remedies are only available via judicial enforcement brought by the Attorney General's Office or a local prosecutor (Health and Safety Code sections 25299 - 25299.02). All formal enforcement cases will be handled through the California Attorney General's

Office. Both OE and the Attorney General's Office recognize the unique challenges faced by public agencies in complying with regulatory requirements. While civil liabilities will be evaluated and applied as appropriate, the anticipated enforcement actions will emphasize compliance and corrective action.

Performance Outputs:

1. Perform 30 to 60 inspections at government-owned and/or operated UST facilities within 6 different local agency jurisdictions in a one-year time period. Inspections will be conducted at federal, state, and local owned and/or operated UST facilities.
2. Take enforcement actions against governmental agencies when appropriate to ensure compliance with state and federal UST laws and regulations.
3. Provide an annual report, summarizing activities completed and compare accomplishments with goals.

B) Pretreatment Industrial-User Enforcement (PIE) Pilot Initiative

Pretreatment is the practice of removing pollutants from industrial wastewaters before they are discharged into municipal sewage treatment systems. The General Pretreatment Regulations, 40 CFR 403.1 *et seq.*, establish the responsibilities of government agencies, industries, and publicly owned treatment works (POTWs) to address industrial pollutants that may pass through or interfere with POTWs.

The State Water Board has traditionally played a general oversight role over the program. In the past, the Regional Water Boards have conducted pretreatment compliance audits and inspections of POTWs pursuant to their NPDES permits, focusing on the POTW's implementation of a pretreatment program for their industrial users (IUs). Each regulated POTW is required to have an Enforcement Response Plan. Any enforcement taken by the Regional Water Boards related to pretreatment violations was directed at the regulated POTWs.

Compliance with pretreatment laws and regulations has been an issue for some time. The U.S. EPA Office of Inspector General, which issued an evaluation report in 2004, found that the *"reductions in industrial waste discharges to the nation's sewer systems that characterized the early years of the pretreatment program have not endured..."* and that *"[a]s a result, the performance of EPA's pretreatment program...is threatened and progress toward achieving the*

Congress' Clean Water Act goal of eliminated toxic discharges that can harm water quality has stalled." In addition, there have been anecdotal accounts of municipalities being unwilling to enforce against major local employers and industrial users re-locating from the service areas of POTWs actively enforcing pretreatment regulations to areas of more lax implementation.

The Pretreatment Industrial-User Enforcement (PIE) Pilot Initiative will cover the direct inspection of industrial dischargers by OE staff and the initiation of formal enforcement against those entities in violation of their pretreatment standards. The goals of the initiative are to:

- Evaluate the competitive advantage gained by noncompliant industrial users over compliant industrial users.
- Evaluate the competitive advantage gained by non-enforcing POTWs over enforcing POTWs.
- Evaluate compliance by industrial dischargers with pre-treatment requirements.
- Gain compliance with pretreatment regulations.

U.S. EPA Region IX has provided the Office of Enforcement with a list of significant industrial users in significant non-compliance based on a review of the 2008 annual pretreatment reports. From this list, Office of Enforcement staff will select an initial pool of 30 industrial users to represent a broad range of industrial activities and geographical areas.

Performance Outputs:

1. Review pretreatment compliance inspection and audit (PCI and PCA) reports and pretreatment annual reports for 2005 through 2009 for selected 30 facilities. For the 30 facilities, determine trends in noncompliance and the impacts of industrial user non-compliance on POTW compliance.
2. Based on the reviews above, conduct a minimum of 18 on-site inspections.
3. Initiate enforcement proceedings against the industrial dischargers based on the findings of the inspections and file reviews.

An evaluation report will be prepared at the conclusion of the Initiative.

C) Mandatory Minimum Penalty (MMP) Enforcement Initiative:

To assist with the reduction of backlogged MMP violations, the Office of Enforcement will lead a team of SWRCB technical staff from OIMA, OE, and DWQ to address MMP violations in the Los Angeles region. As of December 15, 2009, the data indicates that there are still more than 2,500 violations in this Region identified through the MMP Enforcement Initiative that have not yet been resolved. These violations represent more than \$7,500,000 in outstanding monetary liabilities.

The goals of the initiative are to:

- Eliminate the backlog of historic MMP violations in the Los Angeles region.
- Establish a process to expeditiously manage ACL complaints.

Currently, the MMP Enforcement Team is targeting and prioritizing facilities with backlogged MMP violations to be addressed with ACL complaints. The Los Angeles Regional Water Board enforcement staff will address the remainder of the backlogged violations with legal support from the Office of Enforcement.

Performance Outputs:

- Target 48 facilities with backlogged violations to be addressed with ACL complaints in coordination with the Los Angeles Regional Water Board enforcement managers.



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